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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 378. 98

LEWIS H. BEESON, NATHANIEL BACON AND DARWIN H. BAKER, AS TRUSTEES UNDER THE WILL OF STROTHER M. BEESON, DECEASED, PLAINTIFFS IN ERROR,

vs.

HENRY JOHNS AND HENRY OHRT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED OCTOBER 13, 1884.

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1 To the Honorable Stanley Matthews, justice of the Supreme Court of the United States:

The petition of Lewis H. Beeson and Nathaniel Bacon, of Berrien county, Michigan, and Darwin H. Baker, of St. Joseph county, Indiana, respectfully represents:

That your petitioners are trustees under the will of Strother M. Beeson, deceased, who died in 1878 in Niles, Berrien county, Michigan.

That said Strother M. Beeson, in his lifetime, brought suit in the circuit court of Grundy county, Iowa, against Henry Johns and Henry Ohrt, citizens of Iowa, to recover from them about 136 acres of land in said Grundy county held by said Johns and Ohrt under tax deeds, the original title to said lands being in said Strother M. Beeson.

That after the death of said Strother M. Beeson your petitioners were substituted as plaintiffs in said suit, which was decided by said circuit court of Grundy county adversely to your petitioners.

That your petitioners appealed from said judgment and decree of the said circuit court of Grundy county to the supreme court of Iowa, which last-mentioned court also rendered a judgment and decree adverse to your petitioners.

That said judgment and decree last mentioned were final, and were passed by the highest court of the State of Iowa having jurisdiction of the controversy.

That in said controversy was drawn in question the construction of a clause in each of two statutes of the United States, and
2 the decision of said supreme court of Iowa was against the right specially set up and claimed by your petitioners under such clause of each of the said statutes.

That said clause of the first of said statutes is found in article 4 of "An ordinance for the government of the territory of the United States northwest of the river Ohio," passed by Congress July 13th, 1787, and is in these words, to wit, "and in no case shall non-resident proprietors be taxed higher than residents."

That said clause of the second of said statutes is found in part 5 of article 4 of "An act supplemental to the act for the admission of the States of Iowa and Florida into the Union," approved March 3rd, 1845, and is in these words, to wit, "and that in no case shall non-resident proprietors be taxed higher than residents."

That in said controversy it appeared that the owner of said lands at the time of their assessment for taxation for the year for which they were sold was a non-resident of the State of Iowa; that your petitioners claimed, in said controversy, that such assessment was void, and the tax deeds based on a sale for the taxes based on such assessment were void, because, among other reasons, said non-resident proprietor of said lands was assessed higher in proportion than residents of said State of Ohio, in direct violation of said statutes of the United States above mentioned.

That said question was directly passed on by said supreme court

of Iowa in said case, whose opinion therein was filed July
3 13th, 1882, and was adverse to your petitioners.

That your petitioners believe that under the 2d section of the act of Congress of February 14th, 1867, amending the "judiciary act of 1789," they have the right to have the said final judgment and decree of said supreme court of Iowa re-examined in the Supreme Court of the United States.

Your petitioners therefore pray that your honor will allow a writ of error from the Supreme Court of the United States to the supreme court of Iowa, and also the usual citation, and that your honor will approve the bond herewith submitted and allow said writ and sign a citation.

And your petitioners will ever pray, &c.

Dated at Niles, Michigan, June 19th, 1884.

LEWIS H. BEESON,
NATHANIEL BACON,
DARWIN H. BAKER,
As Trustees Under the Will of Strother M. Beeson, Deceased.

STATE OF INDIANA, }
County of Saint Joseph, } *ss:*

Darwin H. Baker, being first duly sworn, says that he is one of the petitioners mentioned in and who signed the above petition; that he has read the said petition and knows the contents thereof, and that the same is true as he verily believes.

DARWIN H. BAKER.

Subscribed and sworn to before me this 20th day of June, 1884.

[Seal of St. Joseph Circuit Court, Indiana.]

GEO. H. ALWARD,
Clerk Circuit Court, St. Joseph County, Indiana.

[Endorsed:] Supreme Court of the United States. Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker, as trustees under the will of Strother M. Beeson, deceased, *vs.* Henry Johns and Henry Ohrt. Petition for writ of error.

[Stamped:] Filed June 30, 1884. G. B. Pray, clerk Sup. Court.

4 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Iowa before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker, as trustees under the will of Strother M. Beeson, deceased, appellants,

and Henry Johns and Henry Ohrt, appellees, wherein was
5 drawn in question the construction of a clause of a statute of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said statute, a manifest error hath happened, to the great damage of the said Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker, as trustees under the will of Strother M. Beeson, deceased, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-sixth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
STANLEY MATTHEWS,
Associate Justice.

[Endorsed:] Supreme Court of the United States of America. Lewis H. Beeson *et al. vs.* Henry Johns *et al.* Writ of error.

[Stamped:] Filed Jun. 30, 1884. G. B. Pray, clerk Sup. Court.

6 The United States of America to Henry Johns and Henry Ohrt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Iowa, wherein Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker, as trustees under the will of Strother M. Beeson, deceased, are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment and decree rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Stanley Matthews, one of the justices of the Supreme Court of the United States, this twenty-first day of June, in the year of our Lord one thousand eight hundred and eighty-four.

STANLEY MATTHEWS,
Associate Justice.

7 [Endorsed:] Supreme Court of the United States. Lewis H. Beeson *et al. vs.* Henry Johns *et al.* Citation.

[Stamped:] Filed Jul. 5, 1884. G. B. Pray, clerk Sup. Court.

STATE OF IOWA, *County of Hardin,* } ss:

On this 30 day of June, in the year of our Lord one thousand eight hundred and eighty-four, personally appeared before me, the subscriber, a notary public in and for Hardin county, Iowa, W. H. Gunn and makes oath that he delivered a true copy of the within citation to William V. Allen.

W. H. GUNN.

Sworn to and subscribed before me the 30 day of June, A. D. 1884.

[Notarial Seal of Sylvain Bloch, Hardin Co., Iowa.]

S. BLOCH,
Notary Public in and for Hardin Co.

I hereby acknowledge receipt of a true copy of the within citation this 30th day of June, 1884.

WM. V. ALLEN,
Att'y for Def'ts.

8 Be it remembered that on the 30th day of June, 1884, there was filed in the office of the supreme court of Iowa a petition for writ of error, and the same is hereto attached and a copy thereof retained in the office of said clerk.

And on the same day there was filed in the office of the clerk of said court a writ of error, the original of which is hereto attached and returned herewith, and a true copy thereof is retained in the office of said clerk.

On the 5th day of July, 1884, there was filed in the office of said clerk a citation, which is hereto attached and returned herewith, and a true copy thereof is retained in the office of the clerk of said court.

On the 30th day of June, 1884, with said writ of error and citation, there was filed a writ of error bond, which remains lodged in said clerk's office, said bond being in the words and figures following, to wit:

9 "Know all men by these presents that we, Lester F. Baker and Benjamin F. Dunn, both of St. Joseph county, Indiana, are held and firmly bound unto Henry Johns and Henry Ohrt in the full and just sum of three hundred dollars, to be paid to the said Henry Johns and Henry Ohrt, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of June, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately at a session of the supreme court of Iowa, in a suit depending in said court between Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker, executors and trustees of the estate of Strother M. Beeson, deceased, appellants, and Henry Johns and Henry Ohrt, appellees, a judgment and decree were rendered against the said appellants, and the said appellants having obtained a writ of error from the Supreme Court of the United States and filed a copy
10 thereof in the clerk's office of the said supreme court of Iowa to reverse the judgment and decree in the aforesaid suit, and a citation directed to the said Henry Johns and Henry Ohrt, citing and admonishing — to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker shall prosecute their cause to effect, and answer all costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) LESTER F. BAKER, [SEAL.]
BENJAMIN F. DUNN. [SEAL.]

Sealed and delivered in presence of—
GEO. H. ALWARD.
G. H. ALWARD, JR.

STATE OF INDIANA, } ss:
County of St. Joseph, }

Lester F. Baker and Benjamin F. Dunn, being first duly sworn, do say that they are together worth the sum of thirty thousand dollars over and above all their debts and liabilities and legal
11 exemptions, and that they reside in the city of South Bend, Indiana.

LESTER F. BAKER.
BENJAMIN F. DUNN.

Subscribed and sworn to before me this 20th day of June, 1884.
[SEAL.] GEO. H. ALWARD,
Clerk of the St. Joseph Circuit Court of, in, and for St. Joseph County, State of Indiana."

"The foregoing bond approved by—
STANLEY MATTHEWS,
Associate Justice."

12 *The Answer of James H. Rothrock, Chief Justice of the Supreme Court of Iowa, to the Foregoing Writ.*

The record and proceeding whereof mention is made in said writ are as follows:

On the 1st day of April, 1881, there was filed in the supreme

court of Iowa, by the plaintiffs in error, an abstract of the record and proceedings in the circuit court of Grundy county, Iowa, the same being in the words and figures following:

Appeal from the Decree and Judgment of Grundy Circuit Court.

LEWIS H. BEESON, NATHANIEL BACON, and DARWIN H. Baker, Executors and Trustees of Estate of Strother M. Beeson, Deceased, Appellants,
vs.
HENRY JOHNS and HENRY OHRT.
} In Equity.

Alford & Gates, for appellants; Wm. V. Allen, for appellees.

13 *Appellants' Abstract of the Record.*

On the 25th day of October, 1877, Strother M. Beeson filed in the Grundy county circuit court a petition, duly verified, alleging—

1st. That he is the owner in fee simple of the west half of the southwest quarter of section No. 29, and the northwest quarter of the northeast quarter of sec. No. 31, in township No. 87 north, of range 15 west, of the 5th P. M., in Grundy county, Iowa.

2d. That about the 16th day of October, A. D. 1873, the acting treasurer of Grundy county fraudulently and illegally made, executed, and delivered to defendant Johns three pretended tax deeds, one purporting to convey to said Johns the northwest quarter of the southwest quarter of said section 29, and another the southwest quarter of the southwest quarter of said section 29, and the other the northwest quarter of the northeast quarter of said section 31, all in the township and range aforesaid, said deeds all purporting to be made to said defendant by reason of a sale of said lands for the delinquent taxes of the year 1869, made and held on the 3d day of October, A. D. 1870.

3d. That said defendant Johns on the same day caused
14 said deeds to be filed for record in the recorder's office of Grundy county and recorded therein in book 31 of the records of said office, on pages 31, 38, and 39, respectively.

4th. That said tax deeds are illegal, fraudulent, and void, and there never was any sale of said land for delinquent taxes of said year 1869 to said defendant Johns, or to any other person, and said deeds were made to said defendant without authority and are wholly void.

5th. That on the third day of October, 1870, the time at which it is claimed that said land was sold to defendant for the delinquent taxes aforesaid, it was corruptly, fraudulently, and unlawfully agreed by and between the purchasers and bidders at said sale that they would take turns in bidding off the tracts of land to be offered by the treasurer, and that each one would bid in his turn, in accordance with such agreement and understanding entered into, and would not bid against each other, nor bid down on the tracts offered, nor bid for the taxes delinquent on any tract a less amount than the whole of such tract, and that all the bidders at such sale entered

into such combination, understanding, and agreement, and that the same existed and was being carried out when the lands aforesaid
15 were sold by the treasurer as aforesaid; that during the existence of such unlawful and corrupt combination, understanding, and agreement, and in furtherance thereof, the defendant Johns bid off the southwest quarter of the southwest quarter of said section No. 29 and the northwest quarter of the northeast quarter of section No. 31, and one A. F. Willoughby bid off the northwest quarter of the southwest quarter of said section No. 29 aforesaid; that by reason of said fraudulent combination, understanding, and agreement between said defendant Johns and said Willoughby and the other bidders at said sale the whole of each of said tracts was struck off to said persons for the taxes claimed to be delinquent thereon, which did not exceed the sum of five dollars on each tract, when, at the time, each of the tracts was worth the sum of three hundred dollars, and said bidders and purchasers thereby prevented competition at said sale and the sale of a small fraction of each of said tracts for the delinquent taxes thereon.

6th. That afterwards the said Willoughby assigned his certificate of sale of the tract bid in by him as aforesaid to defendant Johns, who was present at the sale, and was knowing to all the facts herein alleged at the time he took such assignment.

16 7th. That on the 9th day of September, 1875, the defendJohns leased said land to the defendant, Henry Ohrt, who has no other interest in said land than that derived under and through said lease.

8th. That said deeds are a cloud upon plaintiffs' title to said land.

9th. That he has heretofore offered to pay, and now offers and is ready to pay, any sum which may be necessary to repay to defendants all moneys which they are entitled to receive by reason of bidding off said lands, and the payment of any sums of money by any persons therefor at that time and by reason of the payment of subsequent taxes thereon by defendants, or by any persons for them or *or* under whom they claim.

Prayer.

1st. That an accounting may be had to determine the amounts that defendants are entitled to receive by reason of payment of delinquent taxes on said lands at any time of said sale or subsequently, and that defendants have a special lien on said land therefor.

2d. That the deeds above described be declared and decreed to be fraudulent, illegal, and void, and be set aside, and that the sale of said land aforesaid for the delinquent taxes of the year 1869
17 be set aside and declared void; that the title upon plaintiff's title by reason of said deeds and sale be removed and plaintiff's title quieted, and for general relief.

Verification.

On the 16th day of January, A. D. 1878, said Beeson filed in said cause an amendment to his petition, duly verified, alleging—

1st. That there was no legal and valid assessment of the premises described in plaintiff's petition for the year 1869; that there was no assessment thereof to plaintiff or to plaintiff's grantors, who owned said land at the time of and prior to said assessment, nor was the same assessed to unknown owners in tracts of forty acres each, corresponding to the smallest Government subdivisions, as required by law; that, in truth and in fact, there was no assessment of said land for said year.

2d. That said lands belonged, at the time of assessment for the year 1869 and on the 1st day of January, A. D. 1869, to a non-resident of the State of Iowa, and that if any assessment of said land for the year 1869 was ever made, it, together with all the lands belonging to non-residents of the State in the township in which said land is situated, was assessed and valued, and equalized and
18 taxed, by the officers and authorities making such assessment and equalization and taxation at a higher price and value and at a higher rate of tax than the property and lands of resident owners of property and lands in said township and county for the same year, and that all the other lands and property in said township, except the lands of non-residents of Iowa, were assessed, equalized, and taxed at a value and rate far below its actual cash value, and the said assessment was void, and was, in fact, no legal assessment of said land, and the proceedin-s based thereon and sale are void.

3d. That at the time the assessment of said land was made there was a rule established by the board of supervisors and equalization of said county, and recognized and followed by the assessors of the different townships, including the township where said land was situated, to assess improved lands belonging to resident owners and personal property at from one-third to one-half of its actual cash value, and that said assessment for the year 1869 was made on that basis and value, and at from one-third to one-half its value, and the same was illegal and void.

Verification.

On the 16th day of January, 1878, the defendants filed in
19 said cause their answer, duly verified, alleging that the defendants, answering the petition herein, deny each and every allegation therein contained, except the allegation that the defendant Johns owns said land described in the petition.

Verification.

On the 13th day of December, A. D. 1878, the said Strother M. Beeson died testate, and on the 10th day of June, 1879, on his death, being suggested to the court, the plaintiffs were substituted as plaintiffs herein.

On the 28th day of November, 1879, said cause came on for trial before the court, whereupon the following proceedings were had:

Plaintiffs' Evidence.

Plaintiffs introduced in evidence the book of original entries of Grundy county showing the west half of the southwest quarter, section 29, township 87, range 15, entered by Wm. E. Ide Sept. 3, 1855, and the northwest quarter of the northeast quarter of section 31, township 87, range 15, entered by said Ide Sept. 3, 1855. No. of acres of west half southwest quarter sec. 29 is given as eighty, and of northwest quarter, northeast quarter sec. 31 as forty.

It was then agreed of record that the failure of the court
20 to rule on objections made to testimony at the time of urging the same should not be a waiver of such objections.

Plaintiff then read in evidence the records of Grundy county, Iowa, showing the following deeds:

1st. War. deed from Wm. E. Ide and wife to Geo. W. and Mary L. Cherry, book G, page 116, dated Aug. 20, 1860, filed for record July 11, 1861, conveying the northeast quarter of the southwest quarter and west half southwest quarter of sec. 29, and northeast quarter of northeast quarter and west half of northeast quarter sec. 31, township 87, range 15 west, 5th P. M.

2d. War. deed from Geo. W. and Mary L. Cherry to J. E. White, dated Sept. 16, 1869, recorded book 36, page 624, conveying the northeast quarter of southwest quarter and west half southwest quarter of sec. 29, and northeast quarter of northeast quarter and west half of northeast quarter of sec. 31, township 87 north, of range 15 west, 5th P. M.

3d. Quit-claim deed from J. E. White and wife to Strother M. Beeson, dated March 27, 1876, filed for record April 4, 1876, book 36, page 626, conveying the northeast quarter of southwest quarter of sec. 29, and the northeast quarter of northeast quarter and southwest quarter of northeast quarter of sec. 31, in township 87, range 15 west.

21 4th. Also, a quit-claim deed from J. E. White and wife to Strother M. Beeson, dated May 11, 1876, filed for record June 8, 1876, book 43, page —, conveying the west half of southwest quarter of sec. 29 and the northwest quarter of northeast quarter of sec. 31, township 87, range 15 west.

Plaintiff then read in evidence duly certified copy of the will of Strother M. Beeson, deceased, admitted to probate in Black Hawk county, Iowa, giving, bequeathing, and devising all of the rest and residue of his property, personal and real, owned by him at his death, after payment of his debts and certain specific legacies, none of which embraced this land, to Louis H. Beeson, Nathaniel Beeson, and Darwin H. Baker, in trust of Anna Louise Beeson until she arrive at the age of twenty-five years, and also appoints said persons executors of his last will.

Plaintiff then read in evidence, under objection that the same is irrelevant and immaterial, and that the will introduced shows that the plaintiffs are not the real persons in interest, the deposition of—

HENRY H. ADAMS:

22 Am thirty-four; reside in Cleveland, Ohio; know George W. Cherry and Mary L. Cherry, his wife, and knew them to — residents of Cleveland, Ohio, about the year 1869. The deeds of my present residence are dated 1870, which I purchased from them in 1870. It was the house he lived in at that time and prior thereto. My impression is that they lived in Cleveland, Ohio, during all the year 1869; do not think that they lived in Iowa at that time.

JOHN E. WHITE:

Am sixty; reside in Cleveland, Ohio; am a grain dealer. I resided at Cleveland during all the year 1869. I have never lived in Iowa. Geo. W. Cherry and his wife, Mary L. Cherry, lived in Cleveland, Ohio, at the time the sale and deed of the land was made to me, and for some time both before and after.

It is agreed that the objection made by defendant-, that the present plaintiffs are not the proper parties, shall be considered as made to all the testimony hereinafter introduced.

D. S. BURBANK testified:

I lived in 1869 in Black Hawk township, Grundy county, Iowa; was assessor for that year. Black Hawk township at that time included only township 87, range 15. (Witness shown an as-
23 sessment book.) I think this is the ass-ment book I returned that year to the auditor, but my name is not signed as assessor.

Plaintiff then read in evidence from said assessment-book the following entry:

Unknown owners, road district 2, sub-district 3, S. W. ¼ 29, 87, 15, 160 acres; value per acre, $4; value of land, $640.

Int. 8. Does there appear to be two assessments there of land to unknown owners?

Ans. I see this is in two parts of the same land. I was ordered to assess the townships in quarter sections, and after I had made the books, so far as you see up here, there is no page given here. I returned the books and they returned them back again with the order that all the unknown lands should be assessed in forties, which you find here. According to that this (alluding to the ass-ment of land to unknown owners in quarter sections) is of no account—all this that is not known—all this through to the recapitulation. This part which is assessed to unknown owners in quarter sections is of no account. I was ordered to assess them in forties, and did so assess them.

Int. 12. Now, will you look at the first assessment and see if there was any assessment of the northeast quarter of sec. 31, 87, 15,
24 or any part thereof, made?

Ans. The northeast quarter is not here; the northwest quarter—that is the first quarter in the section. I made that record, listing the lands in forty acres, soon after I made the first assessment—in the course of a week or ten days; couldn't state exactly. The books were sent up here to the court-house, and they were sent back to have them corrected.

Int. 17. Please examine the second assessment and see if there was any assessment of the northeast quarter of sec. 31, or any part thereof, shown to have been made by you?

Ans. It has been changed here. The northeast quarter—well, there seems to be one quarter omitted here. The northeast quarter appears not here.

Int. 22. Now, will you look at the pencil writing over what appears to have been an assessment of the southwest quarter and state whether or no those letters in pencil were written by you?

Ans. No, sir; they were not; I used nothing of the kind I can hardly make it out; it seems that the four forties of the southwest—has been changed clear through to the northeast quarter. This was done after I returned the assessment book. I did all
25 my writing in ink. It appears to have been written in pencil over the figures returned by me. I used no pencil whatever in the book. When I returned the book it appeared in ink as follows: N. E. S. W. 31; N. W. S. W. 31; S. W. S. W. 31; S. E. S. W. 31. It now appears written over in pencil as follows: N. E. S. W.; N. W. S. W.; S. W. S. W.; S. E. S. W., being changed in pencil from the southwest to the northwest quarter.

I think the number of acres as given in each tract were not given by me; they have been erased. They might have been made by me; wouldn't like to say positively. The number of acres in the first tract is given as forty acres; second tract, forty-eight acres and thirty rods; third tract is forty-eight acres; can't make out the rods; the fourth tract is forty acres.

Int. 31. Give the number of dollars at which each tract was assessed.

Ans. The first was $160—$4 per acre; the second was $192.70; the third was $194.27; the fourth $160; each was $4 per acre.

I don't see where the northeast quarter 31 is listed anywhere in that assessment. It seems to have been put in northeast
26 quarter in pencil where I put in southwest quarter. The northeast quarter does not appear here, as I can see.

I had lived in Black Hawk township at that time about three years. At the time I made this second assessment in forty-acre tracts I did not make any personal examination of this land. I made it from the first assessment. The most of the land in that township at that time belonged to non-residents—nearly two-thirds, I should say. As to the basis of valuation of land in that township, I was instructed by the auditor to assess land at about such a figure, according to its value upon examination, and accordingly it was put down at such

and such a figure—three or four dollars an acre—according to location and the quality of the land. There was a schedule sent out to each assessor. I made the valuation upon a basis of two-thirds of the cash value of the property in my township—from one-half to two-thirds of its cash value. The highest price at which I assessed improved land in my township that year was six dollars per acre. I assessed the land of non-residents—unimproved land—in that township at four dollars per acre. The cash value of the best improved land at that time in my township was about
27 twenty dollars per acre for the very best enclosed farms. There were several improved farms that had been improved a number of years, some four or five or six farms in *in* the township that were held at these figures, twenty dollars per acre, and some more. The owners of these farms were living upon them at that time.

The cash value of the next class of improved land at that time was about twelve dollars to fifteen dollars an acre.

The cash value of unoccupied land, or land belonging to non-residents, at that time was—some was worth ten dollars and some three dollars and a half, according to locality.

Int. 54. How much land was there that was worth at that time ten dollars an acre?

Ans. Well, there wasn't one-quarter. The cash value would be all the way from five to eight dollars—yes, from five to ten dollars. The improvements on the improved land was worth about ten dollars an acre. When I made the first assessment I personally examined only the lands belonging to the residents.

Int. State whether you examined any of the non-residents' land at that time?

28 Ans. Oh, some of it. I knew which it was, but there were whole sections, three of four sections, like in a tract. I couldn't find no sections, nor corners, or no nothing without a surveyor.

Plaintiff here introduced in evidence the whole assessment book, showing the assessment to have been made on a basis of six dollars, the highest price, and five dollars, the next price, and four dollars for the lowest-valued land in the township.

So much of the assessment book as relates to the land in suit is as follows:

First Assessment.

Owners unknown.	Description.	No. of acres.	Value per acre.	Total valuation.
"	S. W., 29, 87, 15 -------	160	4.	640
	(N. E., 31, 87, 15, not assessed.)			

Second Assessment.

"	N. W. S. W., 29, 87, 15------	40	4.	160
"	S. W. S. W., " " " ------	40	4.	160
"	N. W. S.W. (N. E.), 31, 87, 15. .	48.30	4.	192 70

(Letters in red-ink pencil.)

[Letters in parentheses are in red-ink pencil in copy.]

Witness resumed:

I believe that the horses and cattle in the township were assessed at about one-half their value. The schedule was sent out; I was to follow that. That was the basis of all the personal property in the township.

29 I valued and assessed the poorest unimproved land, or land belonging to non-residents, at the same price I did the best. It was all considered about the same.

Cross-examined by defendant-:

These two entries, N. W. S. W. 29, 87, 15, and S. W. S. W. 28, 87, 15, I think, are in my handwriting.

Defendant here offers said assessment books, showing the assessment of two forties above mentioned at four dollars per acre.

In this assessment of the N. W. ¼, N. E. ¼, 31, 87, 15, the letters n and w, in ink, are in my handwriting. I used no pencil. I think the 4 in the 48 acres and 30 rods is in my handwriting. I don't know whether the 8 is or not. It has been erased, and I couldn't say whether I did it or not. The $4 per acre, I think, is in my handwriting. The valuation here is in my handwriting, I think. I do not know by whom the letters n and e, in pencil, succeeding the letters n and w, were made *by*. I used no pencil in the book. These assessment books were taken to the county board and accepted. I was not present at the time they were accepted. I deposited

30 this ass-ment book, after making the assessment, with the county auditor. I think the N. W. N. E. 31, 87, 15, has in it more than an even 40 acres of land. This one which is assessed has 48.30 acres. The northwest of the northeast wouldn't come on that line; it would come on the other side of the section; couldn't say whether there is more than 40 acres in the N. W. N. E. 31, 87, 15, or not. This is the last assessment I made, in which the letters n and e are in pencil. When I refer to the first assessment I mean the assessment of lands to unknown owners in quarter sections, and by second or last assessment I refer to the assessment made in forty-acre tracts. I was directed to assess the second time in forty-acre tracts by the auditor.

E. H. BECKMAN, called by plaintiff:

I lived in Grundy Center in 1869; had lived in Grundy county since 1856; was county treasurer in 1869. I lived in Black Hawk

township, Grundy county, previous to living at Grundy Center. I was acquainted with the value of lands in that township in that year. I had been selling lands for a number of years pre-
31 vious to that time in this county; had been engaged in that business. I think the cash value of the best improved lands in Black Hawk township, January 1, 1869, was about twenty dollars per acre. I think the cash value of ordinary improved land in that township at that time was about ten to fifteen dollars per acre. I don't think the cash value of unimproved land there at that time exceeded five or six dollars per acre. I think the proportion of lands at that time in the township that was owned by non residents was about one-third. The improved land belonged exclusively to residents, and the land assessed to unknown owners belonged exclusively to non-residents.

C. W. GIBSON, called by plaintiff, testified:

Am auditor of Grundy county, Iowa; have held that office nearly two years. (Assessment book of 1869 shown witness.) This book is kept in my office and is under my control. It is the assessment-book of Black Hawk township for year 1869 (being same book referred to above and referred to by witness Burbank). There
32 is in my office a book which purports to be the record of the board of supervisors for the year 1869. It is called the minute book (book shown witness). This is the book.

Plaintiff introduced in evidence the record of the board of supervisors acting, or purporting to act, as a board of equalization, on page 111 of said minute book, under date of June 8, 1869, which reads as follows:

"On motion, the board proceeded to the equalization of assessments. A motion was made that all lands in the county assessed to unknown owners be assessed at six dollars per acre, and an amendment was offered that said lands be assessed at five dollars per acre, which motion carried; after which the motion, as amended, was adopted."

Cross-examined by defendant-:

Have not examined that book to ascertain whether there was any other action of the board of supervisors upon this subject of assessment of non-resident land. I can do so. This was where they were acting as a board of equalization. This minute that has
33 been read on page 111 was from their proceedings as a county board of equalization. It was of date June 8, 1869. That was subsequent to the time the assessment had been made in the county for the year 1869. The only other minute I find on that question is in the January session, where they made a classification for the use of the assessors.

Plaintiff introduced in evidence pages 118 and 119 of the record of sales of real estate of Grundy county, Iowa, for delinquent taxes for the year 1869 in the year 1870, said record being offered for

the purpose of showing that there was a combination of the bidders at the sale, being as follows:

Owners unknown.	Description and —.	Purchasers.
"	N. E. S. W. 1, 87, 15	S. R. Raymond.
"	N. W. S. W. " " "	Henry Johns.
"	S. W. S. W. " " "	Henry Johns.
"	S. E. S. W. " " "	S. R. Raymond.
"	N. E. N. E. 6, " "	Henry Johns.
"	N. W. N. E. " " "	S. R. Raymond.
"	N. W. N. E. 9, " "	Henry Johns.
"	S. W. N. E. " " "	S. R. Raymond.
"	S. W. S. W. 15, " "	Henry Johns.
"	S. E. S. W. " " "	S. R. Raymond.
34 "	S. W. N. W. 18, " "	Henry Johns.
	S. W. S. E. 23, " "	Henry Johns.
	S. E. S. E. " " "	Henry Johns.
	N. E. S. E. 24, " "	S. R. Raymond.
	N. E. N. E. 26, " "	Henry Johns.
	N. W. N. E. " " "	S. R. Raymond.
	S. W. S. E. " " "	Henry Johns.
	S. E. S. E. " " "	Henry Johns.
	N. O. (?) S. W. 29, " "	S. R. Raymond.
	N. W. S. W. " " "	A. F. Willoughby.
	S. W. S. W. " " "	Henry Johns.
	N. E. N. E. 30, " "	S. R. Raymond.
	N. W. N. E. " " "	Henry Johns.
	S. W. N. E. " " "	Henry Johns.
	S. E. N. E. " " "	S. R. Raymond.
	N. E. S. W. " " "	Henry Johns.
	S. E. N. W. " " "	Henry Johns.
	N. E. N. E. 31, " "	S. R. Raymond.
	N. W. N. E. " " "	Henry Johns.
	S. W. N. E. " " "	S. R. Raymond.
	N. E. N. E. 32, " "	Henry Johns.
	S. W. N. E. " " "	Henry Johns.
	N. E. N. W. " " "	S. R. Raymond.
	N. W. N. W. " " "	Henry Johns.
	S. W. N. W. " " "	Henry Johns.
	S. E. N. W. " " "	S. R. Raymond.
	N. E. N. W. 36, " "	Henry Johns.
	N. E. (?) N. W. " " "	Henry Johns.
	S. W. N. W. " " "	S. R. Raymond.
	S. E. N. W. " " "	Henry Johns.

35 S. R. RAYMOND, called by plaintiff, testified:

Am recorder of Grundy county; lived in Grundy Center in 1869. I think I attended the tax sale of lands for the taxes of 1869; couldn't say from memory who were the bidders. (Book shown witness.) This is the record of the sales of real estate in Grundy county for that year. By the record it seems that Mr. Johns, Mr. Willoughby,

and myself were the bidders, on this page; couldn't say there was any bidding against each other for any tract offered that day or not; couldn't say whether I bid against any one or not; may have done it and may not; can't tell; shouldn't think there was any bidding against each other from an examination of the record, from its appearance; couldn't say from anything else. According to this record the tax sale- all appear to be full at that sale that day, and none are for less than the whole tract.

Cross-examined by defendant-:

I couldn't say whether there was or not any bidding against each other by the bidders at that sale, from memory; from the appearance of the record I should judge there was not; that is the
36 only thing upon which I base my answer; don't remember anything further about it; have no recollection of the number of persons present at that sale when these tracts in controversy were sold. I was there, according to the record; couldn't say from anything else.

D. S. BURBANK, recalled by plaintiff, testified:

The lands assessed by me as belonging to unknown owners belonged at that time to non-residents.

Plaintiff rested.

Defendants' Evidence.

Defendant- then introduced and read in evidence the following deeds:

1st. E. H. Beckman, treasurer of Grundy county, Iowa, to Henry Johns, tax deed, dated Oct. 16, 1873, filed for record Oct. 16, 1873, and recorded in book 31 of records of Grundy county, page 31, conveying the southwest quarter of the southwest quarter sec. 29, township 87, range 15 west, 5th P. M., in usual form.

2d. E. H. Beckman, treasurer, &c., to Henry Johns, tax deed, dated Oct. 16, 1873, filed for record Oct. 16, 1873, and recorded in
37 book 31 of the records of said county, page 38, conveying the northwest quarter of the southwest quarter sec. 29, township 87, range 15 west, 5th P. M., in usual form. (The deed was issued upon a certificate of purchase as signed by A. F. Willoughby to defendant-.)

3d. E. H. Beckman, treasurer, &c., to Henry Johns, tax deed, dated Oct. 16, 1873; filed for record same day, and recorded in book 31 of the records of Grundy county, Iowa, on page 40, conveying the northwest quarter of sec. 31, township 87, range 15 west, 5th P. M.

A. F. WILLOUGHBY, called by defendant-, testified:

Was auditor of Grundy county, Iowa, in 1869. I can't state any recollection as to how the letters "n" and "e" came to be written in pencil at the description n. w. n. e. 31, 87, 15, but probably from the fact, I suppose, this work was done by the deputy in my absence.

The letters " n " and " e " look like my deputie's handwriting. My deputy was J. W. Peckham; don't know where he is now; he is a non-resident at present. My best judgment is that the letters " n " and " e " are in J. W. Peckham's handwriting—my deputy.

38 I could not say what he did in my absence. He was a general deputy, to the best of my recollection. It would be impossible for me to state how long he remained in my office. I was absent in the month of May, and also in July, August, and a part of September, 1869, and I don't recollect whether he was my deputy during my absence in May or during my absence in July, August, and the first part of September; should say he was deputy five or six months of the year 1869. We, my deputy and I, corrected together the most of the assessor's books; part of, not all. I couldn't say that we positively did all, but we did the most, if not all. Sometimes, when we found that the assessor had not properly described the tract of land, we corrected the description and sometimes we did not. This is the piece right here (referring to N. W. ¼ S. W. ¼, 31, 87, 15, changed in pencil to N. E. ¼). So far as this land is concerned, we did not, from the fact that it is entered here as fractional, when the N. E. ¼ is not fractional. It may be properly returned on the tax-list as not being fractional.

39 Int. 25. Now, then, I will ask you to state what is your best jndgment as to the time when, in this description of the land, the letters n and e were written in pencil.

Plaintiff objects to the question as irrelevant and immaterial unless witness saw or knew of its being done himself.

Ans. Well, should say it was done in July, 1869.

Witness continued: To the best of my knowledge, this assessor's book was in the charge of myself and my deputy during my incumbency in the office of auditor, and was returned to my successor in office.

Cross-examined by plaintiff:

Int. 1. Now, did you write or make these letters in pencil, n. e., over the assessor's figures of s. w.?

Ans. Did I make them?

Int. 2. Yes, did you make them?

Ans This writing looks like my deputy's, and I should say it was.

Int. 3. No, sir; just answer my question. Did you make them in person?

Ans. Did I make them in person?

Int. 4. Yes.

40 Ans. I stated in the first place this writing was my deputy's.

Int. 5. I asked you the question and I want a direct answer to it. Did you make them yourself in person?

Ans. I don't think I can answer.

By the COURT: Now, why can't you answer whether it is in your handwriting or not? If it is, say so; if it is not, say so.

Ans. I think not; I have no positive recollection as to the day it was done; have no positive recollection as to any particular piece as to whether it was done or not.

Redirect:

I assisted in correcting the assessor's books, as was customary. Mr. Williams was my successor in office, I think.

C. W. GIBSON, recalled by defendant-:

I was successor in the office of auditor to Mr. Williams; I found the assessor's book for the year 1869 of Black Hawk township on file in the office when I succeeded Mr. Williams.

Defendant- here rested.

41 Plaintiff then introduced in evidence the abstract of original entries of the county, showing the entry of the west fractional half of sec. 31 and the south half of the southeast quarter of sec. 31, township 87, range 15, at one entry, which tracts, as shown by said entry, contained 431.91 acres.

Plaintiff then rested.

Defendant then introduced in evidence the record of tax sales of Grundy county in the year 1870, for the taxes of 1869, as part of the transaction, of which two pages only were introduced by plaintiff. A copy of so much as is desired by defendants is hereto attached, marked Exhibit A. Defendant- then introduced in evidence page 93 of the minute-book of the board of supervisors at the meeting January 5, 1869, showing the unimproved lands of the county, which had been divided into three classes, and were divided to be assessed at six, five, and four dollars per acre.

Both parties then closed their testimony.

The above and foregoing was all the evidence introduced on either part.

Judgment and Decree.

42 After argument by counsel the court took said cause under advisement, and at the December term, 1880, of said court, to wit, December 7, 1880, rendered a decree in said cause dismissing the petition of the plaintiffs and quieting the title to all of said land described in plaintiffs' petition in the defendants, adjudging Henry Johns to be the owner in fee-simple of the same, and barring and estopping the plaintiffs from having or claiming any title or interest therein adverse to defendants.

To which judgment and decree plaintiffs then and there excepted.

And at the same time it was stipulated between the parties and entered of record that plaintiffs might have till the 3d day of the March term of said court, 1881, to procure the certificate of the judge of said court to the evidence herein; and on the 24th day of March,

1881, it being the second day of the March term of said court, it was stipulated between the parties that the time for certifying said evidence might be extended till April 5th, 1881; and on the 24th day of March, 1881, the judge of said court duly certified the evidence in said cause.

43 And on the — day of January, 1881, the plaintiffs perfected an appeal to this court from said judgment and decree by causing notice of such appeal to be duly served upon the defendants and the clerk of the circuit court of Grundy county, Iowa.

The foregoing is agreed upon as a correct abstract of the record and evidence in this action, and it is stipulated that this cause may be heard in the supreme court on such abstract, and a transcript is hereby waived.

Said abstract is endorsed as follows:

"STATE OF IOWA, } ss:
"*Black Hawk County,* }

"I, Lore Alford, one of the att'ys for appellants, being duly sworn, depose and say that I mailed a copy of the following and within abstract to Wm. V. Allen, Esq., att'y for appellees, on the 31st day of March, 1881, directed to Ackley, Iowa, his place of residence and post office-address, before the closing of the mail for that place that day, said abstract being directed to said Allen, and properly stamped and deposited in the post office at Waterloo, Iowa.

"LORE ALFORD.

"Sworn to and subscribed before me this 31st day of March, 1881.

"[SEAL.] J. W. KRAPFEL,
"*Notary Public.*"

44 And on the 9th day of Dec., 1881, there was filed in the clerk's office of the supreme court of Iowa, by appellant (pl'ff in error) an additional abstract, the same being (omitting title of cause) in the words and figures following, to wit:

Copy of Will.

Additions to plaintiffs' abstract, containing copy of will of Strother M. Beeson, findings of the court and stipulation:

I, Strother M. Beeson, of the township of Niles, Berrien county, in the State of Michigan, being of sound mind and disposing memory, do hereby make, publish, and declare this to be my last will and testament, hereby revoking any other will by me at any time heretofore made. In the name of God, amen.

First. I order any debts I owe to be paid.

Second. I devise to my son, Jacob Beeson, of Monroe, Fayette county, State of Pennsylvania, all the land I own, at the time of my death, in Sanilac and Huron counties, in the State of Michigan.

Third. I give, bequeath, and devise to Lewis H. Beeson, of Niles,

Berrien county, State of Michigan; Nathaniel Bacon, of
45 Hyde Park, Cook county, State of Illinois, and Darwin Baker, of South Bend, St. Joseph county, State of Indiana, in trust for Anna Lewis Beeson, my granddaughter, all other property—real, personal, and mixed—which I may own at the time of my death; said trust to cease on said Anne Lewis Beeson arriving at the age of twenty-five years, and the property to be thence afterwards delivered to said Anne Lewis Beeson.

Fourth. I direct that said trustees shall permit said Anne Lewis Beeson to remain in the house I now occupy, and that they shall employ Mrs. Sarah L. Beeson to reside with and take care of said Anne Lewis Beeson, defraying all charges and expenses of every kind, and paying all costs and charges attending said Anne and her said aunt going every winter to some proper place in the Southern States.

Fifthly. I nominate, constitute, and appoint said Lewis H. Beeson, Nathaniel Bacon, and Dawin Baker my executors of this my last will and testament, and directing them to file their separate, individual bonds without surety.

Dated June 20th, A. D. 1878.

STROTHER M. BEESON.

(Attestation in usual form.)

46 *Findings of Court Below.*

The court in deciding this cause made and filed a finding of facts, and found as follows, to wit:

1st. That the assessment was not irregular or void.

2d. That there was no irregular combination among the bidders at the sale of the land herein for taxes.

Stipulation.

It is hereby stipulated and agreed, by and between the parties to this cause, that the same may be submitted at the December term A. D. 1881, of this court, on the abstract and argument of the plaintiffs, and the argument of defendants already filed herein, and upon the foregoing addition to the abstract, and that the amendment to abstract filed by defendants herein be dismissed.

A transcript is hereby waived.

Said cause was submitted to said supreme court on the foregoing record Dec. 13, 1881, and said court, after due consideration, on the 13th day of July, 1882, it being of the regular June term, 1882, of said court, filed in writing its opinion or decision, the same being duly entered of record, and is in the words and figures following, to wit:

47 *Appeal from Grundy Circuit Court.*

LOUIS H. BEESON *et al.*, Ex'rs and Trustees of the Estate of Strother M. Beeson, Appellants,

vs.

HENRY JOHNS *et al.*

The plaintiffs, claiming to be the owners of certain real estate, brought this action to set aside a tax title to the same on the grounds, first, that there was no assessment; second, that there was a fraudulent combination among the purchasers at the tax sale; third, that there was no assessment to the unknown owners in tracts of forty acres corresponding to the smallest Government subdivisions, as required by law; and, fourth, that the owners being non-residents of the State, the assessment was at a greater value than the property of residents.

There was a trial to the court and the petition dismissed. The plaintiffs appeal.

48 ALFORD & GATES,
For Appellants.
W. V. ALLEN,
For Appellees.

SEIVERS, *Ch. J.:*

I. Eighty acres of the land in controversy is in sec. 29, township 97, range 15. The owners being unknown, the land in said section was assessed to the unknown owners in quarter-section tracts, the value being fixed at four dollars per acre. When the assessment was returned to the board of supervisors it was rejected by the board and the assessor directed to assess the same in forty-acre tracts. This he did, and made return thereof to the board, and on such assessment the taxes were levied. The second assessment was made by fixing the value of each forty-acre tract at the same value per acre as had been done at the first assessment. There was no new examination made, and, in fact, the assessor did not at any time personally examine the land. It is said such assessment is void
49 because the statute then in force required the assessment to be made at the cash value of the land, having due regard to its quality, location, natural advantages, and other elements of value—Rev. —, sect. 720—the argument being the assessor could not comply with the requirements of the statute unless he examined the land and determined its value in accordance with the requirements of the statute. It may be the assessment was irregular, but we do not believe it was void. A literal compliance with the statute, if a personal examination of each forty-acre tract is required, would necessitate that the corners and boundaries thereof should be ascertained. The aid of a surveyor would be necessary, and this would require more time than the assessor is allowed by law to complete the assessment. We do not believe the assessor is required
50 to personally examine each forty-acre tract, but of necessity he must arrive at the value from information derived from

others, having regard, however, to the elements of value prescribed by statute. If he makes mistakes in this respect, as he may do, ample opportunity is given the owner to have the same corrected.

One forty-acre tract of the land in controversy is the N. W. ¼ of the N. E. ¼ of sec. 31, township 87 north, of range 15 west. The whole northeast quarter was omitted by the assessor and not assessed by him. When he made the second assessment and returned the roll to the board of supervisors there was contained therein the following: "N. W. S. W. 31, 87, 15, 48.30 acres." The number of acres was correctly stated. At some time and by some person, after the assessment-roll had been returned — the board of supervisors, there was written with a pencil over the letters "S. W." the letters "N. E.," so that thereafter the land assessed
51 appeared on the roll to be in the northeast quarter instead of the southwest quarter, as returned by the assessor. No change was made in the value fixed by the assessor. The statute in force at the time the assessment was returned authorized the auditor "to correct any clerical or other error in the assessment or tax-book." Rev. —, sect. 747. The auditor testified he believed the alteration or correction in the assessment had been made by his deputy. It is true, his evidence is not of a certain or decided character, but there is nothing contradictory thereto. The assessment-roll as corrected has been at all times on file in the auditor's office, and land was described in the tax-books and sold as described in the corrected assessment-roll. There is no evidence tending to show the land was assessed or taxed more than once. Under the circumstances we are forced to conclude the correction was made by
52 the deputy auditor; that he was authorized to do so there is no doubt. The fact that the roll as corrected has remained on file as a record in the auditor's office, and that it has been regarded in the subsequent proceedings as correct, casts upon appellants the burden of showing that it was incorrect, and that the taxes assessed on the land were inequitable or unjust. This they have failed to do. Besides this, it was the duty of the owner to see that this land was properly assessed, and the statute then in force provided that no error or irregularity in the assessment shall render the taxes invalid or affect the title of any one claiming under a tax deed. It may be conceded the corrected assessment was irregular; it was not, we think, void.

II. There were three bidders at the tax sale, and they did not bid against each other, and this constitutes the only evidence
53 there was a fraudulent combination. We feel constrained to say this evidence is not, in our opinion, sufficient. Fraud cannot be presumed, but the contrary presumption must be indulged in the absence of evidence. It might well be that each bidder obtained all the land he wanted without the necessity of bidding against any one else.

III. Conceding the land in controversy belonged to non-residents and that it was assessed at a greater value than similar land belonging to residents, is the tax title void under the ordinance of 1787 or the act of Congress admitting the State of Iowa into the Union? We

are not prepared to say if such an assessment was objected to at the proper time and manner it could be sustained, but we do not believe, under the facts in this case, the title of the purchase- at the tax sale by reason thereof is void. The authorities cited by counsel for appellant do not go to this extent. Fraud is not alleged or
54 shown, nor is it claimed there was an actual intent to discriminate against non-residents. At most it appears the improved lands of residents were not assessed as high in proportion as the unimproved lands. No discrimination was made between the unimproved lands of residents and non-residents. For aught that appears, the relative value of the improved and unimproved lands was erroneous only. Under such circumstances a correction or abatement should have been applied for as provided for by law. The assessment and levy were not void, and for the correction of the error the remedy provided by law is ample for the complete protection of the taxpayer. Cooley on Taxation, p. 28.

Affirmed.

Day, J., dissenting.

55 And on the same day a final judgment was rendered and and duly entered of record as follows:

Appeal from Grundy Circuit Court.

"LEWIS H. BEESON *et al.*, Ex'rs & Trustees of the Estate of Strother M. Beeson, Dec'd, App'lts,

vs.

HENRY JOHNS *et al.*

In this cause, the court being fully advised in the premises, file their written opinion affirming the judgment of the circuit court (Day, justice, dissenting).

It is therefore considered by the court that the judgment of the court below be, and it is hereby, affirmed, and that a writ of *procedendo* issue accordingly.

It is further considered by the court that the appellants pay the costs of this appeal, taxed at $18.00, and that execution issue therefor."

Afterwards the appellants filed a petition for rehearing, and the same was duly submitted; and, after due consideration, the same was, on the 5th day of October, 1882, overruled, without further or supplemental opinion and without any modification of said final judgment.

56 STATE OF IOWA, *ss:*

I, G. B. Pray, clerk of the supreme court of Iowa, do hereby certify that the forgoing is a full, true, and correct transcript of the record in said cause, being the abstract and additional abstract of appellants (pl'ff in error), the opinion of said supreme court, and entry of final judgment and writ of error bond.

And I further certify that the original writ of error and citation are hereto attached and returned with this transcript, and copies thereof are retained in my office; and this return is made in obedi--nce to said writ of error.

In testimony whereof witness my signature and the seal of said court, at Des Moines, in said State, this 30th day of August, 1884.

[Seal of the Supreme Court of Iowa.]

G. B. PRAY,
Clerk Sup. Court of Iowa.

Endorsed on cover: Iowa supreme court. No. 378. Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker, as trustees under the will of Strother M. Beeson, deceased, plaintiffs in error, *vs.* Henry Johns and Henry Ohrt. Filed 13th October, 1884.

Supreme Court of the United States. October Term, A. D. 1884.

LEWIS H. BEESON, NATHANIEL BACON, and DARWIN H. BAKER, as Trustees under the Will of Strother M. Beeson, Deceased, Plaintiffs in Error,

vs.

HENRY JOHNS and HENRY OHRT, Defendants in Error.

In error to supreme court of Iowa.

And now come Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker, as trustees under the will of Strother M. Beeson, deceased, by Nathaniel Bacon, their attorney, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1st. It appears that the judgment aforesaid given was given for the said Henry Johns and Henry Ohrt against the said Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker, as trustees under the will of Strother M. Beeson, deceased; whereas by the law of the land the said judgment ought to have been given for the said Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker, as trustees under the will of Strother M. Beeson, deceased, and against the said Henry Johns and Henry Ohrt.

2d. Also there is error, in this, to wit, that the said judgment of the supreme court of Iowa was against the right claimed by the said Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker, as trustees under the will of Strother M. Beeson, deceased, to have the said assessment of the said land and the tax deed based thereon declared void under that part of article 4 of an ordinance for the government of the territory of the United States northwest of the river Ohio, approved July 13th, 1787, which provides that "in no case shall non-resident proprietors be taxed higher than residents."

3rd. Also there is error, in this, to wit, that the said judgment of the supreme court of Iowa was against the right claimed by the said Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker, as trustees under the will of Strother M. Beeson, deceased, under that part of subdivision 5 of section 6 of an act supplemental to the act for the admission of the States of Iowa and Florida into the Union, approved March 3rd, 1845, which provides "that in no case shall non-resident proprietors be taxed higher than residents," to have the said tax title declared void.

4th. Also there is error, in this, to wit, in that the supreme court of Iowa, for the reasons above given, did not reverse the judgment and decree of the Grundy circuit court, and did not grant the prayer of the original petition filed in said Grundy circuit court in this case.

Prayer for Reversal.

And the said Lewis H. Beeson, Nathaniel Bacon, and Darwin H. Baker, as trustees under the will of Strother M. Beeson, deceased, pray that the said judgment of the supreme court of Iowa may be reversed, annulled, and altogether held for naught, and that they may be restored to all things which they ha*th* lost by reason of the said judgment, &c., and that this cause may be remanded to the supreme court of Iowa, with directions to reverse the decree of the Grundy circuit court, and to enter a decree in accordance with the prayer of the original petition filed in this case in the circuit court of Iowa within and for Grundy county, or for such other relief or for such further relief as to this honorable court shall seem just.

NATHANIEL BACON,
Attorney for Plaintiffs in Error, Niles, Mich'n.

[Endorsed:] Supreme Court U. S. October term, 1885. No. 378. Luther H. Beeson *et al.*, pl'ffs in error, *vs.* Henry Johns *et al.* Assignment of errors.

[Stamped:] Office Supreme Court U. S. Filed Aug. 1, 1885. James H. McKenney, clerk.

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Supreme Court of the United States.

October Term, A. D. 1887. No. 98.

LEWIS H. BEESON, NATHANIEL BACON AND DARWIN H. BAKER, AS TRUSTEES UNDER THE WILL OF STROTHER M. BEESON, DECEASED, PLAINTIFFS IN ERROR,

vs.

HENRY OHRT, SURVIVING DEF'T IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF FOR PLAINTIFFS IN ERROR.

NATHANIEL BACON, Counsel for Plaintiffs in Error.

Supreme Court of the United States.

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vs.

HENRY OHRT, SURVIVING DEF'T IN ERROR.

In Error to the Supreme Court of the State of Iowa

BRIEF FOR PLAINTIFFS IN ERROR.

May it please the Court:

(STATEMENT OF THE CASE.)

The late Strother M. Beeson in his lifetime filed a petition in the Circuit Court in Grundy County, Iowa, claiming that he was the owner in fee simple of certain lands in said county, asking that certain tax deeds to said lands be set aside and declared void; that his own title be quieted; that an accounting be had of what the adverse party was entitled to receive for taxes paid, including amount paid at the tax sale; and for general relief, (Record pages 6, 7 and 8.)

This suit was originally against Henry Johns and Henry Ohrt. Since the case was brought to this court, Henry Johns has died. His death has been suggested, and an order of publication, under Rule 15, has been made and published. A writ, an alias scire facias, has also been ordered, and has been served

on William Johns, the administrator of the estate of said Henry Johns deceased.

(Sections 955 and 956 Revised Statutes of United States.)

The Grundy circuit court rendered a decree dismissing the petition, and finding said Henry Johns to be the owner in fee simple of all of said lands, (Record page 18), and thus the tax titles were sustained.

From this decree an appeal was taken to the supreme court of Iowa, where the decree of the Grundy circuit court was sustained. The decision of the supreme court of Iowa is on pages 21, 22 and 23 of the Record.

(QUESTION INVOLVED AND HOW RAISED.)

The question which the plaintiffs in error desire to submit to this honorable court to decide, and which question, they allege is involved in this controversy, is,

Are said tax titles valid, if said lands, when taxed, belonged to a non-resident of Iowa, and if such non-resident proprietor was taxed higher than residents of Iowa, in violation not only of that part of Article 4 of the ordinance of 1787, which provides "No tax shall be imposed on lands, the property of the United States, and in no case shall non-resident proprietors be taxed higher than residents," (Appendix to Revision of 1860, Laws of Iowa, page 931,) but also of that part of Section 6 of the act of Congress supplemental to the act for the admission of the States of Iowa and Florida into the Union, which provides "and that in no case shall non-resident proprietors be taxed higher than residents," (Appendix to Revision of 1860, Laws of Iowa, page 968)?

This question was raised by an amendment to the original petition filed in the Grundy circuit court, (Record page 8), and was directly passed on by the supreme court of Iowa in their said decision.

(SPECIFICATION OF THE ERRORS RELIED UPON.)

The plaintiffs in error allege that the supreme court of Iowa erred in their opinion on the above question, which part of their opinion is on pages 22 and 23 of the Record, and is as follows: "III. Conceding the land in controversy belonged to

non-residents and and that it was assessed at a greater value than similar land belonging to residents, is the tax title void under the ordinance of 1787 or the act of Congress admitting the State of Iowa into the Union? We are not prepared to say if such an assessment was objected to at the proper time and manner it could be sustained, but we do not believe, under the facts in this case the title of the purchase-at the tax sale by reason thereof is void. The authorities cited by counsel for appellant do not go to this extent. Fraud is not alleged or shown, nor is it claimed there was an actual intent to discriminate against non-residents. At most it appears the improved lands of residents were not assessed as high in proportion as the unimproved lands. No discrimination was made between the unimproved lands of residents and non-residents. For ought that appears, the relative value of the improved and unimproved lands was erroneous only. Under such circumstances a correction or abatement should have been applied for as provided for by law. The assessment and levy were not void and for the correction of the error the remedy provided by law is ample for the complete protection of the taxpayer. Cooley on Taxation; p. 28."

(BRIEF OF THE ARGUMENT.)

In this argument, it will be claimed for the plaintiffs in error that,

I.

The land in controversy, at the time, 1869, the taxation complained of was made, belonged to a non-resident of the State of Iowa.

II.

The non-resident proprietor of said land was taxed for that year, 1869, higher than residents.

III.

It is a conclusion of law that said taxation, and the tax title based thereon, are void, because said unequal taxation was in violation of that part of said ordinance of 1787 and of said supplemental act, each of which provides "in no case shall non-resident proprietors be taxed higher than residents."

I.

The land in controversy, at the time, 1869, the taxation complained of was made, belonged to a non-resident of the State of Iowa.

The land involved is the west half of the south-west quarter of Section twenty-nine, and the north-west quarter of the north-east quarter of Section thirty-one, all in Township eighty-seven north, of range fifteen west, in Grundy county, State of Iowa, (Record page 6.)

Ths taxation complained of was for the year 1869, (Record page 14 and 18). The land was entered in 1855 by Wm. E. Ide, who conveyed to Geo. W. and Mary L. Cherry in 1860, (Record page 9.)

Geo. W. and Mary L. Cherry, in September, 1869, conveyed the above lands to J. E. White, (Record page 9).

Said J. E. White and wife conveyed the said land in 1876 to said Strother M. Beeson, (Record page 9).

The testimony of John E. White is (Record page 10):

"Am sixty; reside in Cleveland, Ohio; am a grain dealer. I resided at Cleveland during all the year 1869. I have never lived in Iowa. Geo. W. Cherry and his wife, Mary L. Cherry, lived in Cleveland, Ohio, at the time the sale and deed of the land was made to me, and for some time, both before and after."

II.

The non-resident proprietor of said land was taxed for that year, 1869, higher than residents.

To prove this proposition, the plaintiffs in error rely on, and the attention of the court is invited to, these five parts of the Record:

1. That part of the decision of the supreme court of Iowa assigned for error;

2. The evidence of D. S. Burbank, the assesser for 1869;

3. The evidence in relation to what was in the assessment-book;

4. The evidence of E. H. Beckman, the treasurer of

Grundy county for 1869, and

5. The action of the board of supervisors of Grundy county for 1869 in regard to the assessments for that year.

1. That part of the decision of the supreme court of Iowa assigned for error.

In discussing such decision, the counsel for the plaintiffs in error desires only in the views he may take of that decision, and here respectfully presented for the consideration of this court, to speak of the supreme court of Iowa in proper and respectful terms.

The supreme court of Iowa say (Record page 23) "At most it appears the improved lands of residents were not assessed as high in proportion as the unimproved lands."

With this statement of fact the plaintiffs in error entirely agree, and claim that such statement is a virtual admission that the non-resident proprietor was taxed higher than residents. After making the above statement, the supreme court of Iowa further say, "No discrimination was made between the unimproved lands of residents and non-residents." In this statement it is submitted that the court were mistaken, or at least, no evidence can be found in the Record to warrant such a conclusion. Both these statements of the court can be perhaps better considered, after the evidence in the case is referred to, and they will therefore be hereafter mentioned.

2. The evidence of D. S. Burbank, the assessor for 1869.

Such evidence is found on pages 10, 11, 12, 13 and 16 of the Record. All of such evidence, relating in any way to the question under consideration, is hereby referred to and made a part of this argument.

3. The evidence in relation to the assessment-book, on page 12 of the Record.

Such evidence is as follows: "Plaintiff here introduced in evidence the whole assessment-book, showing the assessment to have been made on a basis of six dollars, the highest price, and five dollars, the next price, and four dollars for the lowest valued land in the township."

4. The evidence of E. H. Beckman, the treasurer of Grundy county for 1869.

Such evidence is on pages 13 and 14 of the Record, is here-

by referred to, and made a pnrt of this argument.

5. The action of the board of supervisors of Grundy county for 1869 in regard to the assessments for that year.

On page 18 of the Record it is stated, "Defendant then introduced in evidence page 93 of the minute-book of the board of supervisors, at the meeting January 5, 1869, showing the unimproved lands of the county, which had been divided into three classes, and were divided to be assessed at six, five, and four dollars per acre."

Again on page 14 of the Record it is stated,

"Plaintiff introduced in evidence the record of the board of supervisors acting, or purporting to act, as a board of equalization, on page 111 of said minute-book, under date of June 8, 1869, which reads as follows: 'On motion the board proceeded to the equalization of assessments. A motion was made that all lands in the county assessed to unknown owners be assessed at six dollars per acre, and an amenendment was offered that said lands be assessed at five dollars per acre, which motion carried; after which the motion, as amended, was adopted.'"

This testimony, all taken together, shows that the improved land belonged exclusively to residents, and the land assessed to "unknown owners" belonged exclusively to non-residents; (Record page 14).

That about two-thirds of the land in the township belonged to non-residents. (The Record, page 14, states that Mr. Beckman said "about one-third", but according to the brief filed for plaintiffs in supreme court of Iowa, Mr. Beckman was erroneously reported—that he said the same as the assessor, Mr. Burbank, who said "nearly two-thirds, I should say", (Record p. 11);

That land of non-residents was also called "unimproved land" (Record, p. 12 and p. 14), and "unoccupied land", (Record p. 12);

That the assessment made by the assessor was six dollars, the highest valuation, for improved land, and was four dollars per acre for the land of non-residents, or "unknown owners", (Record page 12), and some lands were also assessed at five dollars per acre (Record p. 12).

The resolution of the board, above quoted, therefore in-

creased the assessed valuation from four dollars per acre to five dollars per acre, of the lands which belonged to non-resident proprietors, or "unknown owners"; and any lands, other than those of "unknown owners" if there were any, that had been assessed by the assessor at four dollars per acre, still remained at four dollars per acre. What these lands were, if any, whether improved or unimproved, is not disclosed by the Record. Whether any residents owned any unimproved lands is not disclosed by the Record.

But if there were any lands, either improved or unimproved, in this township, that were assessed to known owners at four dollars per acre, such lands were not included in the resolution of the board, and were taxed one dollar per acre less than the land of the non-residents.

It is therefore submitted that there is, in this record, nothing whatever, on which can be based the statement of the supreme court of Iowa, that "No discrimination was made between the unimproved lands of residents and non-residents." If such court had not drawn such a conclusion, it may not be improper to infer that they might have decided this case in a different way, for their decision seems to rest in part, at least, on the supposed existence of a condition of things not shown by this record.

The result of the combined action of the assessor and this board of equalization was as follows, as shown by the testimony: The best improved land in the township, the cash value of which was about twenty dollars per acre, (Record page 12) was not assessed for more than six dollars per acre.

Some improved lands, the cash value of which was about twelve to fifteen dollars an acre (Record p. 12), were probably assessed at five dollars, though there is no direct evidence as to what such lands were assessed for. If they were assessed at five dollars, then the lands of non-resident proprietors, the cash value of which was, according to the assessor, from three dollars and a half to ten dollars per acre, and according to Mr. Beckman, not to exceed five or six dollars per acre, were assessed at the same rate, five dollars, as the class of lands worth twelve to fifteen dollars per acre. That is, the best improved lands, worth twenty dollars per acre, were assessed at six dollars;

The next class of improved lands, worth from twelve to fifteen dollars per acre, were either assessed for four, five or six

dollars, but probably at five dollars;

Non-resident lands worth three and a half to ten dollars, according to one witness, and not to exceed five or six dollars, according to another witness, were assessed at five dollars (by the board).

In this township, 87 north, range 15 west, there are 23,395.57 acres, according to official plat of survey, (Department of the Interior—General Land Office). As about two-thirds of this land, or perhaps about 15,000 acres, belonged to non-resident proprietors, the action of the board increased the assessed valuation $1 per acre, or about $15,000, in this township.

That member of the board who wanted to make the assessment of the lands of unknown owners or the unimproved non-resident lands, six dollars, and thereby make it equal to the assessment of the best improved lands in the township, either had very poor powers of discrimination, or else he wanted to make the non-resident land owners pay more than their share. In either case the non-resident proprietor would be the loser.

Whether a discrimination in the assessment as finally settled was made against the non-resident proprietors, and whether the non-resident proprietors were as a matter of fact, actually taxed higher than the residents, are questions which the plaintiffs allege are virtually answered affirmatively by the supreme court of Iowa when they say "At most it appears the improved lands of residents were not assessed as high in proportion as the unimproved lands." For if it can be shown that the unimproved lands belonged to non-residents, is not a violation of the law established?

The assessor seems to use the words, "unimproved lands", in the same sense as the words, "land of non-residents," and "land belonging to non-residents." For on page 12 of the Record he says, "I assessed the land of non-residents—unimproved land," &c., and on page 13 he says, "I valued and assessed the poorest unimproved land, or land belonging to non-residents," &c.

There is no evideuce in this record that a resident owned any unimproved land. Mr. Beckman's testimony, (Record page 14) is that "the improved land belonged exclusively to residents", therefore all the land owned by non-resident proprietors must have been unimproved, and as the non-resident proprietors owned such a large proportion of the township was not the

taxation made, according to the above statement of the court, to bear more heavily on the non-residents than on the residents? In saying then "At most it appears the improved lands of residents were not assessed as high in proportion as the unimproved lands"; does not the supreme court of Iowa virtually say, "residents were not assessed as high in proportion as non-residents"?

III.

It is a conclusion of law, that said taxation, and the tax title based thereon, are void, because said unequal taxation was in violation of that part of said ordinance of 1787, and of said supplemental act, each of which provides "in no case shall non-resident proprietors be taxed higher than residents."

"Courts have always been astute in discovering causes to invalidate tax sales. Where such sales are made from the delinquent, or assessment-roll, and are not preceded and authorized by some judicial proceeding establishing the amount of taxes and costs, a sale for the payment of any excessive or unlawful charge is void.

Cooley on Taxation, 344;
Treadwell vs. Patterson, 51 Cal., 637;
Buchnall vs. Story, 36 Id., 67;
Blackwell on Tax Titles, 192;
Drew vs. Davis, 33 Am. Dec., 213;
Wills vs. Austin, 53 Cal., 152;
Harper vs. Rowe, Id., 233."
From note on page 694, 56 Am. Dec.

The law of Iowa, under which the attempt was made to tax and sell this land, provides (Sec. 720, page 111 Revision of 1860, Laws of Iowa) * * * "real property shall be listed and valued in the year 1861, and each second year thereafter, and shall be assessed at its true cash value, having regard to its quality, location, natural advantages, the general improvement in the vicinity, and all other elements of its value, &c."

The assessor testified (Record page 12), "I made the valuation upon a basis of two thirds of the cash value of the property in my township—from one-half to two-thirds of its cash value."

In Wattles vs. Lapeer, 40 Mich., 625, it is decided that "asesssments upon anything but the true cash value of property

are illegal and in violation of the assessor's official oath." (Head note).

On the part of the plaintiffs in error, it is claimed that the whole action of the assessor, and the action of the board of equalization, taken together, show a willful disregard, not only of the State law, but also of the United States law, and make out a case showing fraud on the part of the assessing officers and intentional fraud, and that a clear intent was shown by the taxing officers to discriminate against non-resident proprietors, and that the supreme court of Iowa were also mistaken in saying "Fraud is not alleged or shown, nor is it claimed there was an actual intent to discriminate against non-residents."

In the case of Humes vs. Scruggs 94 U. S., page 28, it is said "Fraud or no fraud is generally a question of fact to be determined by all the circumstances of the case."

"Acts indicate the intention", Broom's Legal Maxims, p. 301.

But whether there was fraud or no fraud in the action of the taxing officers, what difference could it make to the non-residentproprietor? If his taxes were unlawfully increased, if he was made to bear more than his snare of the public burden, he could get but little comfort in being told that the taxing officers might have erred in judgment only.

"Fraud" or no "fraud", "actual intent to discriminate against non-residents", or no such intent, the result is the same to the non-resident proprietor who is taxed higher than the resident. The language of the ordinance of 1787 and the supplemental act is plain and strong, "in no case shall non-resident proprietors be taxed higher than residents."

The mischief struck at by this provision of the ordinance of 1787 re-enacted in the supplemental act, is set forth by Chancellor Kent (2 Com. 331-2-3) as follows:

"Every person is entitled to be protected in the enjoyment of his property, not only from invasions of it by individuals but from all unequal and undue assessments on the part of government. It is not sufficient that no tax or imposition can be imposed upon the citizens, but by their representatives in the legislature. The citizens are entitled to require that the legislature itself shall cause all public taxation to be fair and equal in proportion to the value of property, so that no one class

of individuals and no one species of property may be unequally or unduly assessed. A just and perfect system of taxation is still a *disideratum* in civil government, and there are constantly existing well founded complaints that one species of property is made to sustain an unequal, and consequently an unjust pressure of the public burthens. The strongest instance in New York and probably in other States, of this inequality was in the assessments of taxes upon waste and unproductive lands, and the oppression upon this description of real property has been so great as to diminish exceedingly its value. This property is assessed in each town, by assesssors residing in each town and whose interest it is to exaggerate the value of such property, in order to throw as great a share as possible of the taxes to be raised within the town upon the non-resident proprietor. The unreclaimed lands, which the owner finds it impossible to cultivate, or even to sell, without great sacrifice, and which produce no revenue, are assessed not only for such charges as may be deemed directly beneficial to the land, such as making and repairing roads and bridges, but for all the wants and purposes of the inhabitants. The lands are made auxilliary to the maintenance of the poor, and the destruction of wild animals; and the inhabitants of each town have been left to judge, in their discretion, of the extent of their wants. Such a power vested in the inhabitants of each town, of raising money for their own use, on the property of others, has produced in many instances, very great abuses and injustice. It has corrupted the morals of the people, and led to the plunder of non-resident land-holders. This was carried to such an enormous extent in the county of Franklin as to awaken the attention of the legislature and to induce them to institute a special commission to inquire into the frauds and abuses committed under this power, and also to withdraw entirely from the inhabitants of new towns the power of raising money by assessments upon property for the destruction of noxious animals. The ordinance of Congress of July 13th, 1787, passed for the government of the northwestern territory, anticipated this propensity to abuse of power, and undertook to guard against it by the provision, that in no case should any legislature within that territory tax the lands of non-resident proprietors higher than those of residents."

In this law plainly laid down in both this ordinance of 1787, and in the "supplemental act", to-wit, "in no case shall non-resident proprietors be taxed higher than residents", there is found a fundamental principle of liberty, of right and of jus

tice. This principle seems to be born in man. It is found even in poetry. Goldsmith in "The Traveler" says

> "And all that freedom's highest aims can reach
> Is but to lay proportion'd loads on each."

In this law is also found a constitutional right, for in Cooley's Constitutional Limitations, 486–7, it is said "It is also believed that that provision in the Constitution of the United States which declares that 'the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States' (Art. 4, Sec. 2) will preclude any State from imposing upon the property within its limits belonging to citizens of other States any higher burdens by way of taxation than are imposed upon the like property of its own citizens. This is the express decision of the supreme court of Alabama[1], following in this particular the dictum of an eminent Federal judge at an early day." "Washington, J., in Corfield vs. Coryell, 4 Wash. C. C., 380." "[1]Wiley vs. Palmer, 14 Ala., 627."

The principle involved is still higher. In the 22d verse of the 24th chapter of Leviticus it is said, "Ye shall have one manner of law as well for the stranger as for one of your own country, for I am the Lord, your God."

Such is the divine principle, the constitutional right, the highest aim of freedom, the immunity given by a positive law of the United States, which, if the view of the plaintiffs in error is correct, are involved in this controversy.

The taxing officials in this matter were but mere agents of the people, mere creatures of the law of Iowa, clothed with such legal powers, subject to the constitution and laws of the United States, and to the laws and constitution of Iowa, as the legislature of Iowa had given them. If the legislature had no right to tax the non-resident higher than the resident, could one of its creatures have that right?

This plain provision of law "in no case shall non-resident proprietors be taxed higher than residents", seems to have been made to clearly keep in view a right that the non-resident proprietors had, a right that existed without any positive written law. Every non-resident owner of Iowa land had, and has the right, to rely on that part of the law as much as on any other part. Of what use is that provision, if the non-resident owner, wherever he may be, can not rest easily, feeling

sure that it will be obeyed, or the action of the taxing officials will be void, without being compelled to watch or have an agent watch the taxing officials? These taxing officials were bound to follow the law and do their duty. They had but limited powers. Part of the barriers that they had no right to break down or go beyond, either purposely or unintentionally, either innocently or fraudulently, either with good intentions or with bad intentions, was this clear command "In no case shall non-resident proprietors be taxed higher than residents." The instant they went beyond this barrier, that instant they ceased to be officers of the law and became usurpers of power, subject to and guided only by their own arbitrary will. The moment they set up a standard of their own to follow, beyond the line which limited their action, that moment they declared that they were higher than the law, and assumed arbitrary power.

"The eloquent denunciation by Burke of the doctrine of arbitrary power, delivered on the trial of Warren Hastings is worthy of being repeated often, and thoughtfully dwelt upon by those who frame laws for a free people. 'He have arbitrary power! My lords, the East India Company have not arbitrary power to give him; the king has no arbitrary power to give him; your lordships have not; nor the commons; nor the whole legislature. We havs no arbitrary power to give, because arbitrary power is a thing which neither any man can hold nor any man can give.'", &c.

See Cooley's Suggestions for the Study of the Law; 2d Ed. Cooley's Blackstone, Vol. I., p. X.

"And again, he says in the same speech; 'Law and arbitrary power are in eternal enmity. Name me a magistrate, and I will name property; name me power and I will name protection. It is a contradiction in terms, it is blasphemy in religion; it is wickedness in politics, to say that any man can have arbitrary power. In every patent of office the duty is included. For what else does a magistrate exist? To suppose for power is an absurdity in idea. Judges are guided and governed by the eternal laws of justice to which we are all subject.' See Prior's Life of Burke, ch. ix.; Works, (Little & Brown's Ed.) ix., 455: Sidney on Gov., ch. 3, § 27."

Id. note, p. X.

In this case is not also the great and vital question involved

whether the exercise of arbitrary power by taxing officials is to be upheld?

This law, "in no case shall non-resident proprietors be taxed higher than residents" is part of a contract.

This contract was made by the United States on one side, and the State of Iowa on the other side.

An inspection of the terms of this contract will show that the consideration of the contract was of immense value.

In 1845 (Revision of 1860, Laws of Iowa, p. 966) Congress, in "An Act supplemental to the Act for the admission of the States of Iowa and Florida into the Union", made this liberal offer to the legislature of Iowa for their acceptance or rejection. That is to say, the United States offered to give to the State of Iowa,

1st, One section of land in every township of the public lands for schools;

2d, Certain seventy-two sections for a university;

3d, Five sections for public buildings for the State of Iowa;

4th, All salt springs in the State not exceeding 12, with 6 sections of adjoining land for the use of the State, but no salt spring owned by an individual should be granted to the State, and that the State should not lease or sell any salt spring for longer than ten years, without consent of Congress.

5th, Five per cent. of the net proceeds of the public lands within the State sold after the admission of the State were to be appropriated for making public roads and canals within the State as the legislature might determine.

This offer, consisting of the above five parts, was made on condition that Iowa should provide by an ordinance irrevocable without the consent of the United States, that the State of Iowa would

1st, Never interfere with the primary disposal of the soil within the same by the United States, nor with the regulations Congress might make for securing the title to purchasers.

2d, That no tax shall be imposed upon lands the property of the United States.

3d, "That in no case shall non-resident proprietors be taxed higher than residents" and

4th, That certain bounty lands shall not be taxed for three years after the date of the patents.

About three years after this offer was made by Congress (Revision of 1860, Laws of Iowa, p. 981) and on January 15th, 1849, the general assembly of Iowa accepted the offer of Congress, and expressly agreed not to do the four things mentioned in the offer of Congress, but asked Congress to agree that the 5 per cent fund might be used for the common schools.

In 1849 Congress granted this request.

(1 Lester's Land Laws, p. 148).

Here then is a perfect contract. Two parties, capable of contracting, deal with each other. A proposition was made on one side and accepted on the other. Lands were offered to one party on condition that such party should not do certain acts. The lands were accepted and the recipient expressly agreed never to do those acts. Neither the legislature of the State of Iowa, nor any officers, nor agents, the legislature might create had any power or right, under this contract, to do either accidentally or purposely what the legislature had agreed that the State of Iowa never would do. In view of the express agreement made by the legislature of Iowa that "in no case shall non-resident proprietors be taxed higher than residents", how can this law be fully sustained, and the question asked by the supreme court of Iowa in their decision, "Conceding the land in controversy belonged to non-residents, and that it was assessed at a greater value than similar land belonging to residents, is the tax title void under the ordinance of 1787, or the act of Congress admitting the State of Iowa into the Union"? be answered rightly, except by "yes"?

The only title the adverse parties had to defeat the title of the plaintiffs in error was the tax title. This tax title is evidenced by certain conveyances made by a public officer who does not appear to have had any personal interest in the land, (Record p. 16). The right to make such conveyances depended on the fact that the land had been previously sold for the non-payment of taxes, and had not been redeemed. The only right any officer had to levy or impose any taxes was the right given by the law. Part of the law governing the imposition of taxes is that law which says "in no case shall non-resident proprietors be taxed higher than residents." No public official who had anything to do with this tax title, from the time the assessment was made to the time the deed was made, had any

right to take a single step as such official, unless that step was permitted by the law. When the law plainly says a step shall not be taken, and that step is taken, and by virtue in part of that step, land is sold, if the title depending in part on such illegal step is sustained, it follows that the law, in one case at least has no force. It follows, in one case at least, that the result is the same as if the law had never existed. The right to make this taxation, sell the land and execute a deed, was not a secret right, a private trust, known only to those agents of the people who made the law on one side, and those agents of the people who were to carry out the law on the other side. This right was not a confidential agency known only to the officers who created the agents, and the officers who acted as agents, so that any one could buy at a tax sale, and be an innocent purchaser for value. Neither Congress, nor the legislature of Iowa had any secret understanding with these taxing officials. The terms of this trust, the powers possessed by these taxing officials, are found in the public laws which every purchaser at the tax sale was bound at his peril to know.

Is it not then a fair conclusion that if it is condeded that the taxing officials did not act within their authority, if it is conceded that the law was broken, either their action was null and void, or that the law is useless, and can be regarded or disregarded by the taxing officials with the same effect on their action? And if it makes no difference whether the law is obeyed or not, the question naturally arises, Of what use then is the law? What was it made for?

But it may be said that it makes a difference whether the taxing officials intended to break the law. The supreme court of Iowa seem to have taken this view of the matter, in connection with the idea, that as there is a chance given the non-resident proprietor to object at a certain time to any such assessment, he must either avail himself of that chance, or forever after hold his peace. For they say, in their opinion, "*We are not prepared to say if such an assessment was objected to at the proper time and manner it could be sustained, but we do not believe, under the facts in this case, the title of the purchaser at the tax sale by reason thereof is void.*"

They conclude by saying "*The assessment and levy were not void, and for the correction of the error, the remedy provided by law is ample for the complete protection of the tax-payer*" citing Cooley on Taxation, p. 28.

When is the "proper time", and what is the "manner", in which to object to such an assessment, and what is "the remedy provided by law", which it is said "is ample for the complete protection of the taxpayer"?

The court probably had in mind Section 740, page 114, Revision of 1860, Laws of Iowa, which is

"Any person who may feel aggrieved at anything in the assessment of his property, may appear before the board of equalization, either in person or by agent, at the times mentioned in the preceding section, and have the same corrected in such manner as to said board shall seem just and equitable".

Their argument seems to be that this section gives "the proper time and manner", and furnishes a "remedy" that "is ample for the complete protection of the taxpayer"; and that a non-resident proprietor, who, for any reason, has failed to appear before this board, can not be heard in any court, except possibly in cases where, in the opinion of the court, he can make out a case of fraud on the part of the taxing officials. In other words, it seems to be the opinion of the supreme court of Iowa that this equalization board, in some cases at least, is the only tribunal which can decide the question here raised.

If this equalization board is such a tribunal, who made it so? The State of Iowa created it, and the State of Iowa is a party to the very contract claimed to be violated. The situation then is this: A right is claimed under a law of the United States, which law is also a contract between the United States and the State of Iowa; that right so claimed is passed on by the highest tribunal of that State, and the decision is adverse to such claimants. One reason given for such decision is that such claimants should have submitted their case for decision to a board, in part created for the equalization of taxes. If such board was the tribunal, and the only tribunal, before which this question could be tried, then indeed the plaintiffs in error have no standing in this court. But the plaintiffs in error allege that power to pass on this question here involved, that the right to say, whether under the facts in this record, the non-resident proprietor in this case was taxed higher than residents, and if he was so taxed, then the right to say whether a tax title founded on such unequal taxation is void, is expressly given to this court by Article 3 of the Constitution of the United States, by which article the judicial power of the United States is vested in one supreme court, and such inferior courts as Con-

gress may ordain and establish, and in which article it is also provided among other things that "the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States," &c.

If the plaintiffs have the right under the constitution and laws of the United States to have their complaint heard in this court, and the plaintiffs so allege, does not that right exist independently of any law that the State of Iowa may have made creating another tribunal to hear such complaint? There are certain questions which the constitution and laws of the United States have given this court the right to decide, and if the question raised in this case is one of those questions which this court has the right to decide, then, can such right be taken away from this court, because a State has created a "board" which, under the State law, has the right also to pass on the same question involved in this controversy? Have the courts of Iowa the right to say that when a right is claimed under the laws of the United States, they will not examine or decide whether such right exists, because there is a board created by their State law to decide such a question? Has the non-resident proprietor no right to be heard on this question in the State courts of Iowa? Is the only place where he can be heard before this "board"?

Section 161 of the Code of Iowa (1873) says "The district court shall have and exercise general and original jurisdiction, both civil and criminal, where not otherwise provided, and appellate jurisdiction in all criminal matters. Such court shall have a general supervision over all inferior courts and officers in all criminal matters, to prevent and correct abuses where no other remedy is provided."

The next section is "The circuit court shall have and exercise general original jurisdiction concurrent with the district court in all civil actions and special proceedings, and exclusive jurisdiction in all appeals and writs of error from inferior courts, tribunals or officers, and a general supervision thereof in all civil matters to prevent and correct abuses where no other remedy is provided."

On page 513 of the same volume, is Section 3163 of the same code which says, "The supreme court has appellate jurisdiction over all judgments and decisions of all other courts of record, as well in case of civil actions as in proceedings of a special or independent character."

In the same volume is the Constitution of the United States, and on page 756, is found this provision, being part of article 6 of such constitution;

"This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

This suit was originally brought in the circuit court in Grundy county (Record page 6).

The plaiutiffs in error therefore allege that when this question under this law of the United States was raised in the courts of Iowa, the judges of such courts were bound to sustain the United States law if they believed it had been violated. No State law could give any "board" the exclusive right to pass on a question as to whether a United States law had been violated and to remedy such violation, because the above provision of the United States Constitution expressly says that the judges in every State shall be bound by the laws of the United States.

It is therefore submitted that under this provision of the United States Constitution last cited every suitor in every court in the United States has the right to rely on the laws of the United States, and that such right can not be lessened in any way, because there may be another tribunal, because there may be some "board" where he can also rely on those laws. And when the non-resident proprietor under one of those laws invokes the protection and aid of the court, is it a sufficient answer for him to be told that he could have applied to another tribunal, a "board", and that his remedy there is "ample"?

It is true that this non-resident proprietor either knew or was bound to know that his land would be taxed; that this equalization board would meet; that this board had the right and the power to correct any irregular or wrong assessment, and that the land would be sold if the taxes were not paid.

But it is equally true that the taxing officials knew, or were bound to know that Section 720 of Revision of 1860, Laws of Iowa, required them to assess all land "at its true cash value", and that a law of the United States as well as of the State of Iowa provided that "in no case shall non-resident proprietors

be taxed higher than residents."

It is also true that while on the part of the non-resident proprietor there may have been neglect in looking after his property, yet on the part of the assessor there was a positive violation of the Iowa law, for he himself says (Record page 12) "I made the valuation upon a basis of two-thirds of the cash value of the property in my township—from one-half to two-thirds of its cash value," besides a violation by both the assessor and the equalization board, as the plaintiffs allege the facts show, of the United States law.

The non-resident proprietor was guilty of no violation of law in not appearing before this board, while there was a violation of law on the part of the taxing officials.

Should then the possible neglect on one side overbalance the actual violation of law on the other?

The non-resident proprietor is indeed in a very unfortunate condition, if this county board is the only tribunal to try this question, and if on account of illness, important engagements, or poverty, he is unable to appear before this board, and thereby forfeits the right to have his complaint heard in the courts of his country.

If this board is the only tribunal that can decide this question, then hereafter every non-resident proprietor of Iowa land, either in person or by agent, will be compelled to watch the assessing officials to see that they do not violate this United States law, and must appear before a "board" or lose his right, in some cases at least, to ever after complain of the assessment. Every business house outside of Iowa which may own land in that State; every non-resident educational or charitable society which may perchance own land in many counties in Iowa, will be in the same condition, and be bound by the rule laid down by the above decision of the Iowa supreme court.

Such owners can never be sure how great errors in value may not be made by ignorant or malicious assessors or boards, and the law of the United States, a sacred contract between the Nation and a State, proves of but little, if any, value.

To the argument of the supreme court of Iowa, the United States law itself is a conclusive answer. "In no case", it says, "shall non-resident proprietors be taxed higher than residents."

It is submitted that the words "in no case, each and every one, have a meaning and should be given full force and effect,

and that such words are just as binding as any other words of this law.

In Broom's Legal Maxims, (8th Ed.), p. 585, it is said "One part of a statute must be so construed by another that the whole may, if possible, stand; and that if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant; and it is a sound general principle, in the exposition of statutes, that less regard is to be paid to the words used than to the policy which dictated the Act."

And again (p. 586) "'It is my opinion", observed Mr. Justice Coleridge, in a modern case[1], 'so important for the court, in construing modern statutes, to act upon the principle of giving full effect to their language, and of declining to mould that language in order to meet either an alleged inconvenience, or an alleged equity, upon doubtful evidence of intention, that nothing will induce me to withdraw a case from the operation of a section which is within its words, but clear and unambiguous evidence that so to do is to fulfill the general intent of the statute, and also that to adhere to the literal interpretation is to decide inconsistently with other and overruling provisions of the same statute." "[1][R. vs. The Poor Law Commissioners, (St. Pancras), 6 A. & E. 7 (33 E. C. L. R.)]."

In Bishop on Contracts, Sec. 579, it is said, "Every clause, and even every word of a contract should when possible, have assigned to it some meaning, and a harmonious whole be made to appear, for so the parties plainly intend, nor especially would they wilfully insert in their contract a mere idle provision."

If the words, "in no case", are given full force and effect, how can it make any difference whether there was fraud in the taxing officers, or whether their action was simply erroneous, or whether the non-resident proprietor appeared before the equalization board? If the words, "in no case", are given their full meaning, can it make any difference whether there was an intent to discriminate against non-resident proprietors, or no such intent?

The following is from a note in Broom's Legal Maxims, 8th Ed., p. 739. "With reference to a breach of the revenue laws, Lord Stowell observes 'It is sufficient if there is a contravention of the law, if there is a *fraus in legem*. Whether that may have arisen from mistaken apprehension, from carelessness, or from any other cause it is not material to inquire. In these cases it is not necessary to prove actual and personal fraud'. The Reward,

2 Dods. Adm. R., 271."

If these officers were being tried on a criminal charge, then indeed the intent with which they acted, would be most material. In this civil action when it is sought to hold land not withstanding a law, and yet where the only foundation for holding the land must be a compliance with the law, can the intent of the taxing officials be of any more consequence than it is in case of a man who fails to pay a note and is sued on the note?

If however it is necessary to show fraud, to show an intent on the part of the taxing officials to discriminate against non-resident proprietors, it is submitted that from the facts in this case and from what has already been said, such a fraudulent intent is shown.

It is a fundamental principle in the administration of justice that no one shall be deprived of his property "without due process of law" which right is expressly given in the Constitution of the United States (Amendments, Art. 5), and in the constitution of the State of Iowa adopted in 1857, (Sec. 9 on p. 989 Rev. of 1860, Laws of Iowa). In this case the non-resident proprietor has been deprived of his property. His property has been taken away from him against his will. The question is now whether the non-resident proprietor's land in this controversy has been taken under "due process of law." No personal jurisdiction was ever obtained over this non-resident proprietor in any of the proceedings by which his property was taken. All such proceedings were had against the property only. The only way in which this property could be legally taken away from this non-resident proprietor against his will is the way laid down by law. Part of that law is the provision "in no case shall non-resident proprietors be taxed higher than residents." If that way was followed, then the property has been taken under "due process of law." But when the proceedings by which the tax title owner claims to hold the land are examined, they are found not to be according to the law but are found to be in plain violation of the law, if the position of the plaintiffs in error is correct. And when the attention of the supreme court of Iowa is called to these proceedings, the non-resident proprietor is told in substance that, conceding these proceedings are not according to law yet he has not shown fraud and that he ought to have objected to them before; that he ought to have made his complaint to the very officers who are alleged to be the wrong-doers: and that that

remedy is "ample" for his "complete protection". When, in any court, land is taken under an attachment writ and sold, without personal service being had on the defendant, and without such defendant appearing in the case, all the proceedings necessary to give the court jurisdiction must be strictly in accordance with the law, or no title passes. When such proceedings are attacked, what case can be found which holds that although the jurisdictional proceedings are against the law, yet as the court or any officer is not shown (in the opinion of the judges deciding,) to have acted fraudulently, or as the illegal step may have been taken by an error of judgment merely, the title under the attachment is good? Or what case can be found which holds that in such an attachment case the original owner can not dispute the title given by the court because he could have appeared in the attachment proceedings and have raised his objections there? The taxing officials are bound to keep within the law as much as courts. Unless this land has been taken by "due process of law", it has never been legally taken, and it still belongs to the owners of the original title.

Whenever public officers exceed their authority their acts are void.

Jones vs. Gibson, N. C. Term Rep. 41 (7 Am. Dec, 690).

"But where a court has not by law an authority to act, its acts are void and may be set aside on motion."

Whitley vs. Black, 2 Hawks, 179 (11 A. D., 753).

Although court has jurisdiction both of subject matter and of person, judgment is void if it exceeds its power.

Ex parte Lange, 18 Wall., 163.

"The supreme court of the United States in the case of Voorhees vs. Bank of the U. S., 10 Pet., 449, say; 'The line which separates error in judgment from the usurpation of power is very definite and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court, or may be declared a nullity collaterally when it is offered in evidence in an action concurring the matter adjudicated, or purporting to have been so. In the one case it is a record imputing absolute verity, in the other mere waste paper.'"

Reynolds vs. Stansbury & Busch, 20 Ohio, 344 (55 A. D., 463).

In the case of the United States vs. Arredondo et al., (6 Pet. 729, it is said, "It is a universal principle that when power or jurisdiction is delegated to a public officer or tribunal over a subject-matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject matter, and individual rights will not be disturbed collaterally for anything done in the exercise of that discretion within the power and authority conferred. The only question which can arise between an individual claiming a right under the act done, and the public or any person denying its validity, are, power in the officer, and fraud in the party. All other questions are settled by the decision made or the act done by the tribunal or officer, whether executive: Marbury vs. Madison, 1 Cranch, 170–171: legislative:—McCulloch vs. Maryland, 4 Wheat., 423; Satterlee vs. Mathewson, 2 Pet., 412; Providence Bank vs. Billings, 4 Id., 563: judicial:—Perkins vs. Fairfield, 11 Mass., 227; McPherson vs. Cunliff, 11 Serg. & R., 429 (14 A. D., 642); adopted in Thompson vs. Tolmie, 2 Pet., 167–168; or special:—Rogers vs. Bradshaw, 20 Johns., 739–740; Shand vs. Henderson, 2 Dowl., P. C., 521; unless an appeal is provided for, or other revision by some appellate, or supervisory tribunal is prescribed by law." (quoted in Borden vs. State, 11 Ark., 519, S. C., 54 Am. Dec., 238).

In sales for taxes, if any of the statutory requirements are neglected, no title passes. McClung vs. Ross, 5 Wheat, 116; Ronkendorff vs. Taylor, 4 Pet., 349; Thatcher vs. Powell, 6 Wheat., 119.

Applying these principles to this controversy, it is found that power and authority were conferred on the assessor to assess the land at what he might honestly think was its cash value, but non-residents should not be assessed higher than residents. Instead of doing that, he himself says that he "made the valuation upon a basis of two-thirds of the cash value", (Record p. 12), and the result of the action of the "board" and the supervisor was as admitted by the supreme court of Iowa at least to leave the improved lands of residents "not assessed as high in proportion as the unimproved lands." Thus "the power and authority conferred" do not justify the action of the taxing officials, the power to make such an assessment was not given them, and the plaintiffs therefore claim that there has been no "due process of law" in this case, by which the taking of this land from the original owner can be justified.

The command "In no case shall non-resident proprietors be

taxed higher than residents" either gives every non-resident proprietor a substantial right, on which he can rely at all times and in all places, or it amounts to little or nothing. If this command is disobeyed, the non-resident proprietor is the one who suffers. This command seems to have been made to give the non-resident proprietor a sure and certain protection.

In a note to Clark vs. Crane, 71 Am. Dec., 779 (S. C. 5 Mich., 151) it is said, "Provisions of tax laws are not merely directory when a departure from them would be prejudical to the owners of the property taxed, Houghton Co. vs. Auditor-General, 41 Mich., 30; French vs. Edwards, 13 Wall., 514; or when the legislature evidently intended that the provisions should be compulsory. Silsbee vs. Stockle, 44 Id., 567; Hurd vs. Raymond, 50 Id., 70. And a requisition that the assessor's certificate shall show expressly by recitals that the assessment has been made on the basis which the statute has laid down is mandatory. Warren vs. Grand Haven, 30 Id., 30, all citing the principal case."

"Where the assessors did not follow the law, but their action was in opposition to the plain words of the statute, the assessment is void."

Desty on Taxation, 643, citing Nat. Bank vs. Elmira, 53 N. Y., and cases cited.

"Assessments made in willful disregard of the rule of uniformity and assessments not verified by the affidavit of the assessor, as required by the statute, are invalid." Id., 643, citing Tierney vs. Un. Lumbering Co., 47 Wis., 250; Philleo vs. Hiles, 42 Wis., 527; Plumer vs. Marathon Co., 46 Wis., 163.

Mr. Chief Justice Shaw in Torry vs. Millbury, 21 Pick., 64, cited in Sibley vs. Smith, 2 Mich., 499, says:

"One rule is very plain and well settled that all those measures which are intended for the security of the citizen, for ensuring an equality of taxation, and to enable every one to know, with reasonable certainty, for what polls, and for what all who are liable with him are taxed, are conditions precedent, and if they are not observed, he is not legally taxed; but many regulations are made by statute, designed for the information of assessors and officers, and intended to promote method, system and uniformity in the mode of proceeding, the compliance, or non-compliance with which does in no respect affect the rights of tax-paying citizens, these may be considered di-

rectory."

In Clark vs. Crane, 5 Mich., 154, it is laid down that "what the law requires to be done for the protection of the taxpayer is mandatory and can not be regarded as directory merely."

"To sustain a title under a sale for taxes, the following principles were recognized by this court in the case of Scott vs. Babcock, 3 G. Greene, 133: If lands are taken, under a statute authority, in derogation of the common law, every requisite of the statute having the semblance of benefit to the owner must be strictly complied with. A penalty so severe as this should not attach, unless the officers of the government—its agents—have strictly complied with and fulfilled their duty. The law must have been strictly performed," &c.

From McGahen vs. Carr, 71 Am. Dec., 425 (6 Io.

The principle found in the contract and law, "in no shall non-resident proprietors be taxed higher than residents is of the very essence of taxation. The word "tax" in Burrill's Law Dictionary is said to be from the Greek word meaning "to set in order", "to arrange or adjust". Also "tax" is "literally, or according to its derivation, an imposition laid by government according to a certain order and proportion, (*tributum certo ordine constitutum*) Spelman, voc. taxa".

Mr. Justice Campbell says in Woodbridge vs. Detroit, 8 Mich., 294, "The very term taxation, whether used in a constitution or elsewhere, signifies a proportioned charge upon some uniform standard either of value or something else, which will afford a means of comparison."

In Potter on Corp. Sec. 180, citing Mill on Pol. Econ., Vol. 2, 370–372, it is said "Taxes are largely, if not wholly, sacrifices for the public good; 'equality of sacrifice' being the rule dictated by justice. Equality so far as practical, is the very idea of a tax."

If the land in this controversy had belonged to the United States, and had been erroneously assessed to "unknown owners", and had been sold, it would be safe to assert that the tax title then would be illegal and void whether directly or collaterally attacked.

In the case of McGoon vs. Scales, 9 Wall., 23, Mr. Justice Miller says, "It is claimed that the land was sold for State taxes in April, 1849, and that the title under that sale became

vested in the plaintiff. The answer to this is, that the land was then owned by the United States, and was not subject to taxation, the sale having been made in 1851, and the patent issued in 1852." Why was the land not subject to taxation, even though it did belong to the United States? The answer is that as the land was situated in Wisconsin, the constitution of that State provided (Rev. Stat. of 1849, p. 22) "And no tax shall be imposed on land the property of the United States, and in no case shall non-resident proprietors be taxed higher than residents." On p. 792 of same volume there is the same provision in the Act of Congress of Aug. 6, 1846, authorizing the admission of Wisconsin as a State.

Now, the right of the United States to hold its lands free from taxation can not be any greater, than the right of the non-resident proprietor to be taxed no higher than residents. The law of the United States that prevents the Nation's lands from being taxed, is the same law on which the plaintiffs rely in this case. If the land in this controversy had belonged to the United States when taxed, the argument, that as the United States had not appeared before this "board," and as fraud was not shown, the tax title was not void because the assessment might have been erroneous only, would not be entertained by any court, if the decision of the above case of McGoon vs. Scales, 9 Wall., 23, was followed. The fact that the State of Iowa has passed a law specially exempting United States lands from taxation, might make the case stronger; but without any such state law, these United States lands could not be taxed.

The moment it was shown that the land in the above case belonged to the United States when taxed, that moment the tax title was declared void. And in this controversy, the moment it is shown that the non-resident proprietor was taxed higher than the resident, why should the tax title be sustained? If the tax title in this case is sustained, in case the court is satisfied that the non-resident proprietor was taxed higher than the resident, would there not be one rule established for the United States, and another rule for the non-resident proprietor, when both in part at least claim under the same law, the same contract? If the view taken by the supreme court of Iowa is the right one, and if their decision is good law, then hereafter will not the same rule apply to the United States land, and if such land should hereafter be erroneously taxed and sold, by mere accident or in any case where fraud is not shown to the

satisfaction of the court, will not such taxation and sale be held valid, if the United States did not appear before the equalization board?

The attention of the court is called to the law of Iowa by which the tax-deeds were made conclusive evidence "that the property had been listed and assessed at the time and in the manner required by law" (Section 784, Rev. of 1860, Laws of Iowa).

In Vol. 17 Am. Decisions beginning on page 508, this statute is discussed. On page 509 it is said: "It has since been conclusively determined that this statute is unconstitutional so far as it attempts to make the tax-deed conclusive as to matters jurisdictional; that is, to the prerequisites of the sale, and as to the fact of sale, while it is constitutional so far as it respects the manner of the sale; McCready vs. Sexton, 29 Iowa, 356; Hurley vs. Woodruff, 30 Id., 260; Rima vs. Cowan, 31 Id., 125; Martin vs. Cole, 38 Id., 141; Gould vs. Thompson, 45 Id., 450. Under that statute therefore, the deed is *prima facie* evidence of the preliminary and jurisdictional steps, and of the fact of the sale and the other facts mentioned in the statute, while it is conclusive as to the regularity of the sale: Rima vs. Cowan, 31 Iowa, 125; Martin vs. Cole, 38 Id., 141; Gould vs. Thompson, 45 Id., 450; Callanan vs. Hurley, 93 U. S., 387."

On the same page it is also said, "In other States, also, it has been decided that statutes making tax deeds conclusive, with respect to jurisdictional facts, or facts vital to the exercise of the power of taxation and sale, were unconstitutional: Quinlon vs. Rogers, 12 Mich., 168; Abbott vs. Lindenbower, 42 Mo., 162; S. C., 46 Id., 291."

17 Am. Dec., p. 509.

In the petition filed in the Grundy circuit court, (Record page 7) there is an offer to pay any sum necessary to repay any taxes paid by the defendants on this land, including what was paid at the tax sale. And part of the prayer of the petition is that an accounting may be had of what the defendants are entitled to receive, and that they may have a special lien on the land therefor.

In case the tax title is declared void, this offer the plaintiffs in error now again make, but they respectfully ask that the estate of Henry Johns, (the administrator of which has been served with process of this court), may be decreed to pay a reason-

able sum for the use of the land, the taxes paid by the defendants to be deducted therefrom. This request is made under the prayer for general relief contained in the petition. (Record p. 7).

In conclusion, the plaintiffs in error hereby express their high appreciation of the law of their country that has permitted them to bring this, their grievance, to the highest tribunal of the Nation, from whose decision there can be no appeal. Whatever that decision may be, it will ever be a source of satisfaction to the plaintiffs that the questions involved have been passed upon by this tribunal, and that in the execution of the trusts committed to their charge, they invoked its judgment.

NATHANIEL BACON,
Counsel for Plaintiffs in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 98.

LEWIS H. BEESON, NATHANIEL BACON AND DARWIN H. BAKER, AS TRUSTEES UNDER THE WILL OF STROTHER M. BEESON, DECEASED, *Plaintiffs in Error*,

vs.

HENRY OHRT AND OTHERS, *Defendants in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF FOR DEFENDANTS IN ERROR.

GALUSHA PARSONS, *Of Counsel for Defendants in Error.*

DES MOINES, IOWA.

P. C. Kenyon, Publisher Law Briefs, Des Moines.

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BRIEF FOR DEFENDANTS IN ERROR.

This action was brought in the circuit court of the state of Iowa, by the testator of the now plaintiffs in error. The petition, as it is called in Iowa, and answer are printed at pages 7 and 8 of the record. The judgment of the circuit court was in favor of the defendants; plaintiffs appealed and the judgment was affirmed by the supreme court. 59 Iowa, 166. By the second paragraph of the amended petition it is alleged that the owner of the lands in question was, at the time of their assessment, a non-resident of the state of Iowa; that these and all other lands of non-residents were assessed and taxed higher than the lands of resident owners. It is not alleged that this was fraudulently done, or that the owner made any objection to the valuation of

his lands, or any application to the board of supervisors to reduce such valuation.

The evidence shows that the lands were classified for the purposes of assessment as *improved* and *unimproved*, and that the valuation was made by the assessor with reference to that, and not with reference to the value of each particular tract of land, leaving that to be fixed by the board of equalization under section 739 of the Revision. It does not appear that there was any distinction between residents and non-residents, although it does appear that all of the lands assessed as unimproved lands belonged to non-residents, nor does it appear either by the allegations of the petition, or the evidence, whether these particular tracts were improved or unimproved. All that is shown is that these lands were assessed to *unknown owners*, and that all lands so assessed belonged to non-residents. It does not appear that *all unimproved* lands were owned by non-residents or that no unimproved lands were owned by residents. All that does appear is that all the lands *assessed to unknown owners* belonged to non-residents.

It also appears that the board of supervisors as a board of equalization, fixed the value of all lands assessed to unknown owners at five dollars an acre, that the value of the improved lands was from fifteen to twenty dollars an acre, of the unimproved from three dollars and fifty cents to ten dollars an acre; that the improvements of themselves would be about ten dollars an acre. The assessor valued improved lands at six dollars an acre and unimproved at four but what value was put upon the former by the board of equalization does not appear. The supreme court held *first*, that the burden was upon the plaintiff to show that the taxes assessed on the land were inequitable or unjust, and that they had failed to do so; *second*, that the assessment, if conceded to be irregular, was not void; *third*, that at most the improved lands of residents were not assessed as high in proportion as the unimproved lands, *but that no discrimination was*

made between the unimproved lands of residents and non-residents. Its conclusion was that "under such circumstances a correction or abatement should have been applied for as provided for by law. The assessment and levy were not void, *and for the correction of the error the remedy provided by law is ample for the complete protection of the tax payer.*"

The last paragraph of this ruling, so far from being in conflict with anything that this court has ever decided, was, I think, in entire accord with all of its decisions that have any bearing upon the subject.

Pelton vs. N. B., 101 U. S., 143.
Cummings vs. N. B., 101 U. S., 153.
Stanley vs. Supervisors, 121 U. S., 535.
Williams vs. Supervisors, 122 U. S., 154.

While some of these cases hold—which no one questions—that a court of equity may, under certain circumstances, enjoin the collection of a tax, they are directly opposed to the maintenance of an action like this.

The provisions of the statutes of Iowa in force in 1869, so far as relevant to anything now here, are as follows:

REVISION.

SEC. 734. It shall be the duty of the assessor to list each and every person in his township, and to assess all the property, personal and real, therein, and any person who shall refuse to assist in making out a list of his property, or of any property which he is required by law to assist in listing, or refuse to make the oath or affirmation required by this act, shall forfeit the sum of one hundred dollars, to be recovered in the name of the county for the use of the common schools therein; and where any person refuses to make out a list of his property, which by law he is required to do, the assessor shall assess such person according to the best information he can get, as to the amount of taxable property which such person has.

SEC. 737. When the name of the owner of any real estate is unknown and the assessor finds it impracticable to obtain the same, it shall be proper and lawful to assess such real estate without connecting therewith any name, but inscribing at the head of the page the words "owners unknown."

SEC. 739. The board of supervisors of each county, shall constitute a board for the equalization of the assessment, and have power to equalize the assessments of the several persons and townships of the county, substantially in the same manner as is required of the state board of equalization to equalize among the several counties of the state so far as applicable, at their regular meetings in June and next succeeding the general election in each and every year; and at such meetings they shall add to said assesement any taxable property in the county not included in the assessment as returned by the assessors, placing the same in the list of the proper township, and shall assess the value thereof.

SEC. 740. Any person who may feel aggrieved at anything in the assessment of his property, may appear before the board of equalization either in person or by agent, at the times mentioned in the preceding section, and have the same corrected in such manner as to said board shall seem just and equitable.

Upon the facts alleged in the second paragraph of the amended petition (record p. 8), the only one under which it is claimed any *federal question* could arise, I think the first question is—

FIRST,

Was the assessment void, or simply irregular; if the latter only, what was the owner's remedy; could he have applied to the township board of equalization, or might he at his option stay away, suffer his lands to be sold, and then invoke the jurisdiction of a court of equity to annul the sale?

SECOND.

Upon the other allegations of the petition, the court having had jurisdiction of the cause, was it within its jurisdiction to annul the sale by reason of the matters stated in this paragraph, and if the supreme court decided that it was not, is that a federal question?

THE REMEDY.

The decisions in Iowa, as well as in this court, are that as to all matters within the jurisdiction of a special tribunal, the party must submit his *grievance* to that tribunal before, as a party plaintiff, he can demand the aid of a court of equity to give him

any relief which it was competent for that tribunal to have given him. The decisions in Iowa are from an early day.

In *Macklot vs. City of Davenport*, 17 Iowa, 379, the court held,

1. That when a statute upon a general subject has provided a tribunal for the determination of questions connected therewith, the jurisdiction thus conferred is exclusive, unless otherwise clearly expressed or manifested.
2. When a statute in relation to revenue provides a tribunal for the correction of the errors of revenue officers, by proceedings in the nature of an appeal to it, such quasi-appellate jurisdiction is exclusive.
3. Such exclusive jurisdiction does not prevent a party from resorting to the ordinary tribunal for a remedy against the malice or corruption of a revenue officer, or from availing himself of the general remedies of *certiorari* or *mandamus* to such special tribunal.
4. The remedy of a party against whom taxes are erroneously assessed is, by application to the board of equalization for a correction of the error.

That this was the only remedy for an erroneous assessment merely because it was excessive was held in *Nugent vs. Bates*, 51 Iowa, 77.

If this is correct, there is no federal question in this case. Its decision either in the circuit or the supreme court did not necessarily involve the construction of the clause of article four of the ordinance of 1787,—the same in the supplementary act admitting Iowa into the Union—relied upon by counsel for plaintiffs in error, namely, "*In no case shall non-residents' property be taxed higher than residents.*'" If plaintiffs' land was so assessed he should have applied to the board of equalization for the correction. As I understand the rule of this court, it is not sufficient that some federal question might have arisen in the case, but it must affirmatively appear that such question did arise, that it was actually decided, and that its decision was controlling; in other words, that the judgment of the state court could not have been given without deciding that question. I suppose it to follow even if the fact is that the lands in question were taxed higher than the lands of resi-

dents of similar quality and kind, still, if the court might have decided the case and rendered the judgment which it did without reaching that question and without giving construction to this clause of the ordinance, that this court would have no jurisdiction to reverse its decision.

Such a case would not be distinguishable from one where the state court placed its decision upon some principle of general commercial law, or upon grounds of estoppel, or the statute of limitations, or the want of power to make any contract at all, or whether payments were voluntary and therefore could not be recovered back, or whether public officers, acting in a *quasi* judicial capacity, would be liable for a mistaken construction of an act of congress; or where the decision of the state court in a case involving the validity of a license, the authority to make which depended upon the construction to be given to an act of congress, decided that no license existed. In all of which cases, and many others of a similar character that might be mentioned, this court has decided that no federal question was involved.

Of course there is room for poetry and declamation (plaintiff's brief, pages 12, 13) without a federal question, but that is rather matter of entertainment, for the amusement column of the newspapers, than of judicial decision. It may be that a board created by state laws for the purpose of equalizing the public burdens of the owners of property within its limits, ought not to have "arbitrary power," or that "law and arbitrary power are in eternal enmity," and that the exercise of such power, whether the law gives it or not, might not be in entire consonance with counsel's understanding of "the 22d verse of the 24th chapter of Leviticus." But one who comes into this court,—with all reverence be it said for both Burke and Leviticus,—ought to be able to point to something a little more definite upon which to invoke its jurisdiction. A failure to do so may be neither "blasphemy nor wickedness" (brief, page 13). Still

if there is no law which gives this court the power in the particular case which a party has brought here, to reverse the judgment of a state court, it would be little less than *arbitrary power* for it to *assume* the right to do so.

I don't find fault with counsel for ornamenting his argument in that way. Taxes and treason *are* odious. Of the two, the masses have usually taken a little less kindly to the first than to the other. No political party ever tried to catch votes by promising *more taxes*. Shakespeare speaks of government revenues as *Exactions most pestilent to the hearing;* and nearly a century ago,— almost contemporary with the speech in the *Great Hall of William Rufus*, from which counsel quotes—the particulars of British taxation—with a view I suppose to inclining the tree by bending the twig—were carefully itemized by an English writer of some eminence and set in form to be spoken by the school boys of that generation, a legacy to which our own sons have succeeded. I agree with counsel that it would be better if governments could be carried on without taxes, if they would run themselves, but as that is up to date only a talked of reform, I suppose taxes and death in the future will continue to be spoken of in about the same relation to each other that they have in the past. For saying all which in this presence I can only excuse myself by pleading that the other side was the first offender,—that I was invited, and that to be invited into the company of the Beautiful and the Sublime, poetry, oratory and Blair's rhetoric *all at once* in a law argument, is a thing of so exceptionally good fortune that a little liberty may be taken in the way of its enjoyment.

To get back to the argument:

Of course the state of Iowa can *pass no law* by which *it* taxes the lands of non-residents higher than those of resident proprietors, but suppose in a particular instance the members of its board of supervisors, as the law then was, have erred in their judgment, or to put it stronger, suppose they have intentionally

adopted an erroneous classification of the lands of their county, to the prejudice of non-resident owners, are the foundations of the government overturned, "fundamental principles of liberty, of right and of justice" (brief, page 11) put in peril, or is it not rather a matter which the non-resident and the resident have it alike in their power to correct, speedily, adequately, and inexpensively, by applying to *them* to correct the error into which they have fallen, or which they have intentionally committed? I don't see anything in that which should alarm either "the king, lords and commons," or any non-resident owner of a forty acre tract of land in that state, or which, if such owner sees proper to stay away and not make any effort to correct the error in the way that the law provides that it might be corrected, should impose upon another tribunal a thousand miles away, the duty of relieving him from the consequences of his own negligence. In my judgment the grounds upon which counsel plants himself in those portions of his argument, without something more definite to bring his cause of complaint within some recognized head of equity jurisdiction, are entirely too rhetorical, not to say airy, to be made the basis of an argument for bringing the board of supervisors, or the township trustees, as the law in that state now is, before this court to be dealt with. If they willfully violated the law the plaintiffs by timely action would not have been without remedy in the courts of the state. It may be that their action would have been void, but that is neither alleged nor proved, nor if it had been, would that bring the case within the jurisdiction of this court.

Doubtless it would have been inconvenient for the plaintiffs, non-residents, to have watched the local authorities where their lands were situated, but that is an inconvenience, although greater in their case than in that of those nearer at hand, to which they were subject in common with resident citizens of the state. More than the laws of the state gave to its own citizens certainly they could not reasonably ask, either because arbi-

trary power is a thing always to be denounced or because the ordinance of 1787 declares that the state shall not require them to pay higher taxes than residents. I have read the argument of plaintiffs' counsel certainly without any desire to underrate its force, or a willingness to misstate or to misapprehend the grounds upon which he places the claims of his clients or the reasoning by which he supports them. If there is anything in either that might not with just as much fitness be said in any other case where a party has negligently or intentionally failed to avail himself of a plain, adequate and inexpensive remedy open to him and all others similarly situated, I am unable to see it. Men generally think when their property is sold for taxes that it is an outrage, and are ready to say in the courts or anywhere else, that the government is a failure, that we are on the verge of anarchy, that the fundamental principles of liberty, right and justice are in danger—brief, bottom page 11—and all that, but so far as I have ever heard, it is not often that utterances of that kind are made the sole ground for asking this court to exercise its real or supposed powers.

DUE PROCESS OF LAW.

Due process of law does not mean that the states shall not have the power in some form to raise the revenues necessary for keeping up their existence. It may be that the "Greek word tax" (brief, p. 26) has grown into popular disfavor, or that at the beginning it was not the best that might have been chosen to indicate the means by which governments raise the money with which to pay their bills. To be taxed at all, as counsel argues, has never been reckoned among the pleasures of the imagination, but still governments, and laws, and *taxation* have gone on, and I suppose will continue to do so, so long as society exists, and that taxes will continue to be submitted to, provided the means for their imposition and collection are regulated by a law which provides the same remedies for all persons.

It seems to me that this portion of the argument is worse than the other, as it would apply to residents as well as to non-residents, and this court would be called upon to sit as a board of equalization for all the towns and cities from Maine to Oregon, with a standing army of clerks and policemen to look after such local authorities as township trustees and common-councilmen. If counsel's premises and reasoning do not lead to something like this as their logical conclusions, he has not taken the trouble to indicate the point at which this court, with his ideas of due process of law and arbitrary power, ought to stop—where it might properly refuse to entertain jurisdiction.

That the ordinary proceedings in the different states for the levy and collection of taxes are due process of law, whether generally, or within the meaning of the fourteenth amendment to the constitution, this court has decided, and that, too, without apparently having thought it a question which admitted of serious discussion. In *McMillan vs. Anderson*, 95 U. S., 37, and in the later case of *Kelly vs. Pittsburg*, 104 Id., 82. It said, "this court cannot say in such cases, however great the "hardship or unequal the burden, that the tax collected is taking "the property of the taxpayer without due process of law." And in speaking of the value of the land in the latter case, page 80, it said: "It is alleged, and probably with truth, that the esti-"mate of the value of the land for taxation is very greatly in ex-"cess of its true value. Whether this be true or not we can not "here inquire. We have so often decided that we cannot review "and correct the errors and mistakes of the state tribunals on "that subject, that it is only necessary to refer to those decisions, "without a restatement of the argument on which they rest."

In State Railroad Tax Cases, 92 U. S., 575, nearly the whole subject as to when courts of equity will entertain jurisdiction in such cases was gone into.

In *Kirtland vs. Hotchkiss*, 100 Id., 498, the court said that it is competent for a state to provide by statute that an erro-

neous assessment shall not vitiate a tax sale was decided by this court in *Witherspoon vs. Duncan*, 4 Wallace, 210.

By the statutes in force in Iowa at the time of the assessment and sale in question (Revision, Sec. 762), it was provided. "In "all cases where any person shall pay any tax, interest or costs, "or any portion thereof, that shall hereafter be found to be "erroneous or illegal * * * the board of supervisors "shall direct the treasurer to refund the same, and in case any "real property subject to taxation shall be sold for such erro- "neous tax, interest or costs, the error or irregularity in the "tax may at any time be corrected, and shall not affect the "validity of the sale or the right or title conveyed by the treas- "urer's deed." By section 784 it was provided that the tax deed should be *prima facie* evidence among other things that the taxes were levied according to law.

THE PURPOSE OF THE ORDINANCE OF 1787 AND THE ORGANIC ACTS OF WISCONSIN AND IOWA:

Neither the prohibition contained in article 4 of the ordinance of 1787 nor that in section 5 of the act of congress of March 3, 1845, supplementary to the act for the admission of the states of Iowa and Florida into the Union, was designed to apply to the acts of mere executive officers. They were simply limitations upon legislative power.

So far as applicable to anything in this question, the ordinance of 1787 is "the legislatures of these districts or new states shall "never interfere with the primary disposal of the soil by the United "States in congress assembled, nor with any regulations con- "gress may find necessary for securing the title in such soil to the "*bona fide* purchasers. No tax shall be imposed on lands, the "property of the United States; and in no case shall non-resident "proprietors be taxed higher than residents" (Revision, page 931, Sec. 4).

Up to this point I have referred only to these acts as they are

the only ones referred to by counsel for plaintiffs in error. But in order to their proper understanding it is necessary to state a little more definitely how they came into the state of Iowa. Of course, as the territory forming the state of Iowa was no part of the North-Western Territory, the ordinance of 1787 did not, of itself, apply to it. It came into that state first through the act of congress organizing the territory of Wisconsin, afterwards by the act organizing the territory of Iowa, and after that it was continued by the act of congress for the admission of the state, and the acceptance by the state in terms of the propositions in which it was embodied, which, of course, if there is anything in it, makes the case a little stronger for plaintiffs than counsel has stated it, or at least puts it in a little stronger light than he states it.

Section 6 of the act of congress organizing the territory of Wisconsin, April 20, 1836, which is contained in the act of congress of June 12, 1838, organizing the territory of Iowa in the same words, is as follows:

SEC. 6. *And be it further enacted*, that the legislative power of the territory shall extend to all rightful subjects of legislation; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the governor and legislative assembly shall be submitted to, and, if disapproved by the congress of the United States, the same shall be null and of no effect (Revision, p. 950).

The act of congress of March 3, 1845, providing for the admission of the states of Iowa and Florida into the union contained nothing upon this subject, but the supplemental act passed upon the same day contained a proviso so far as necessary to the proper understanding of anything now here, in these words:

Provided, that the five foregoing propositions herein offered are on the condition that the legislature of the said state, by virtue of the powers conferred upon it by the convention which framed the constitution of the said state, shall provide by an ordinance, irrevocable without the consent of the United States, that the said state shall never interfere

with the primary disposal of the soil within the same by the United States, nor with any *regulations congress may find necessary for securing the title in* such soil to the *bona fide* purchasers thereof; and that no tax shall be imposed upon lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents (Revision, p. 697, Sec. 5).

These provisions were accepted by the state of Iowa by an act passed January 15, 1849, which contains among other things, the following:

EC. 2. *And be it further enacted and ordained*, as conditions of the grants specified in the propositions first mentioned in the foregoing section, irrevocable and unalterable without the consent of the United States, that the state of Iowa will never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations congress may find necessary for securing the title in such soil to the *bona fide* purchasers thereof, and that go tax shall be imposed on lands, the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents (Revision, p. 981, Sec. 2).

As I do not think that your Honors will ever reach the question of the construction of these provisions, I do not feel that I ought to enter upon any discussion of them. I think it manifest that they do not give to the federal courts a jurisdiction of all the acts of the local officers of the states and territories to which they relate either to correct their errors of judgment, or to declare their proceedings void, either because they adopted an erroneous system for classifying the lands within their jurisdiction, or because their judgment as to values was not as good as it ought to have been.

I submit —

1. That there was, in fact, no discrimination between residents and non-residents, so the supreme court of Iowa found.

2. That the prohibitions relied upon do not apply to mere ministerial and executive officers.

3. That plaintiffs should have applied to the board of equalization to correct the error, if any.

4. That in any event if the board erred it was not an error, which it is within the jurisdiction of this court to correct.

GALUSHA PARSONS,

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